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**CHARGES OF HON. OSCAR E. KELLER AGAINST THE  
ATTORNEY GENERAL OF THE UNITED STATES**

---

**HEARINGS**

**BEFORE THE**

**COMMITTEE ON THE JUDICIARY**

**HOUSE OF REPRESENTATIVES**

**SIXTY-SEVENTH CONGRESS**

**THIRD AND FOURTH SESSIONS**

**ON**

**H. RES. 425**

---

**Serial 41**

**Parts 1 and 2—Combined**

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**SEPTEMBER 16, 1922, AND**

**DECEMBER 4, 12, 13, 14, 15, 16, 19, 20, 21, 1922**



**WASHINGTON  
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**1922**



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HOUSE OF REPRESENTATIVES.

SIXTY-SEVENTH CONGRESS.

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CHARGES OF HON. OSCAR E. KELLER AGAINST THE  
ATTORNEY GENERAL OF THE UNITED STATES.

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SERIAL 41.

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PROCEEDINGS IN HOUSE OF REPRESENTATIVES, SEPTEMBER 11, 1922,  
ON HOUSE RESOLUTION 425.

[Extract from Congressional Record, September 11, 1922, pp. 13417-13418.]

IMPEACHMENT OF ATTORNEY GENERAL DAUGHERTY.

Mr. KELLER. Mr. Speaker, I impeach Harry M. Daugherty, Attorney General of the United States, for high crime and misdemeanors in office.

Now, Mr. Speaker, I ask recognition on that high privilege.

The SPEAKER. The Chair has already recognized the gentleman.

Mr. KELLER. Mr. Speaker, because of the privileged character of this proceeding I shall object—

The SPEAKER. The Chair will say to the gentleman that he ought first to prefer his charges.

Mr. KELLER. I will do that in due time.

The SPEAKER. But the gentleman ought to do it now.

Mr. KELLER. I thought that in the memorial I might present the charges.

The SPEAKER. When the gentleman rises to a question of this high privilege he ought to present definite charges at the outset.

**Mr. KELLER.** The Chair means such charges as acts of the Attorney General?

The **SPEAKER.** Yes; definite charges.

**Mr. KELLER.** Very well, Mr. Speaker, I will do so.

First. Harry M. Daugherty, Attorney General of the United States, has used his high office to violate the Constitution of the United States in the following particulars:

- (1) By abridging freedom of speech.
- (2) By abridging the freedom of the press.
- (3) By abridging the right of people peaceably to assemble.

Second. That, unmindful of the duties of his office and his oath to defend the Constitution of the United States, and unmindful of his obligations to discharge those duties faithfully and impartially, the said Harry M. Daugherty has, in his capacity of Attorney General of the United States, conducted himself in a manner arbitrary, oppressive, unjust, and illegal.

Third. He has, without warrant, threatened with punishment citizens of the United States who have opposed his attempts to override the Constitution and the laws of this Nation.

Fourth. He has used the funds of his office illegally and without warrant in the prosecution of individuals and organizations for certain lawful acts which, under the law, he was specifically forbidden to prosecute.

Fifth. He has failed to prosecute individuals and organizations violating the law after those violations have become public scandal.

**Mr. BLANTON.** Mr. Speaker, I rise to a point of order.

The **SPEAKER.** The gentleman from Texas will state it.

**Mr. BLANTON.** I make the point of order that the recitation of generalities does not under the rules of this House constitute an impeachment of a public official; that this recitation is nothing but generalities, no specific charge of malfeasance in office, no specific charge of improper conduct in office, but a mere recitation of generalities which could be lodged against any official of the United States. I make the point of order that it does not come within the rule.

The **SPEAKER.** The Chair could not hear the gentleman from Minnesota very well, but the Chair thought that there were definite charges. [After examining the written charges.] The Chair overrules the point of order.

**Mr. KELLER.** Sixth. He has defeated the ends of justice by recommending the release from prison of wealthy offenders against the Sherman Antitrust Act.

Seventh. He has failed to prosecute defendants legally indicted for crimes against the people.

Mr. Speaker, from all precedent in impeachment cases, the House can not refuse to consider an impeachment brought publicly and seriously on the floor of this Chamber against a public official.

I offer therefore the following resolution and am prepared to appear before a committee of the House, there to produce evidence and witnesses in proof of my charges.

Mr. Speaker, I offer this resolution, and I would like to have the Clerk read it.

The SPEAKER. The gentleman from Minnesota offers a resolution which the Clerk will report.

The Clerk read as follows:

[House Resolution 425.]

Whereas impeachment of Harry M. Daugherty, Attorney General of the United States, has been made on the floor of the House by the Representative from the fourth district of Minnesota: Be it

*Resolved*, That the Committee on the Judiciary be, and they hereby are, authorized and directed to inquire into the official conduct of Harry M. Daugherty, Attorney General of the United States, and to report to the House whether, in their opinion, the said Harry M. Daugherty has been guilty of any acts which in contemplation of the Constitution are high crimes or misdemeanors requiring the interposition of the constitutional powers of this House: and that the said committee have power to send for persons and papers and to administer the customary oaths to witnesses.

Mr. KELLER. Mr. Speaker, I move the adoption of the resolution.

Mr. MONDELL. Mr. Speaker, I move the reference of the resolution to the Committee on the Judiciary.

The SPEAKER. The gentleman from Wyoming moves the reference of the resolution to the Committee on the Judiciary.

Mr. MONDELL. Mr. Speaker, this is in accordance with the usual practice of the House in matters of this sort to have a resolution of impeachment considered by the Committee on the Judiciary. While it is true in some cases there have been special committees appointed, the usual practice is otherwise. I move the previous question on my motion.

Mr. KELLER. Mr. Speaker, I would like to ask unanimous consent to extend my remarks in the RECORD.

Mr. SNYDER. Mr. Speaker, I object.

The SPEAKER. The question is on the motion of the gentleman from Wyoming to refer the resolution to the Committee on the Judiciary.

Mr. WINGO. Mr. Speaker, a point of order.

The SPEAKER. The gentleman will state it.

Mr. WINGO. I suggest to the Chair the gentleman from Minnesota has the floor, and if he wishes to discuss it before its reference under the rule he has the right to point out what the specific facts are which he charges. It is true he did not object when the gentleman from Wyoming made his motion, but he did not yield the floor, Mr. Speaker. I think it is not very material in this instance, but in a matter of this kind we certainly ought not to set a precedent by which a man can be taken off his feet in the midst of his proceedings.

The SPEAKER. The Chair will state the facts. The gentleman addressed the House and offered a resolution, and the gentleman from Minnesota then moved the adoption of that resolution, and, of course, he yielded the floor—

Mr. WINGO. I beg the Speaker's pardon, but if the Speaker will listen for just a moment. The motion to refer to the Committee on the Judiciary by the adoption of the resolution is purely incidental and ancillary to his action. The gentleman had obtained the floor on the impeachment charge.

Now, it was his duty, having the floor, and it was his right to make one of two motions. Now, he made a motion that he had a perfect right to make. He could have waited until he had finished to make the motion, but the better practice would have been to make the

motion and then address himself to the disposition of the impeachment.

The SPEAKER. The gentleman from Arkansas states the facts accurately. The gentleman had the floor and the Chair had recognized him and he was addressing the House. He then moved the adoption of the resolution. The Chair was entirely in ignorance as to whether the gentleman desired to further address the House. But he made the motion. Thereupon the gentleman from Wyoming moved, as he had the right to do, the Chair thinks, the gentleman from Minnesota [Mr. KELLER] having made a motion, that the whole matter be referred to the Committee on the Judiciary, and upon that he has moved the previous question. The Chair thinks he had the right to do so, and that that is the proper practice.

Mr. WINGO. Does the Speaker hold that a Member having the floor and has not indicated his intention to yield, can of right be taken off the floor by some one making a privileged motion?

The SPEAKER. The Chair does not think he could unless he had made his motion.

Mr. WINGO. The gentleman had made it. And the protest is not so much with reference to this instance, but a man in any solemn proceeding like it could be taken off the floor while making serious charges.

The SPEAKER. The gentleman made a motion for the disposition of the matter, and thereupon the gentleman from Wyoming [Mr. MONDELL] made another motion, and upon that the previous question was ordered.

The question is on the motion of the gentleman from Wyoming for the previous question.

The question was taken, and the previous question was ordered.

The SPEAKER. The question is on the motion of the gentleman from Wyoming to refer the resolution to the Committee on the Judiciary.

The motion was agreed to.

Mr. KELLER. Mr. Speaker, I again ask unanimous consent to address the House for 10 minutes.

The SPEAKER. The gentleman from Minnesota asks unanimous consent to address the House for 10 minutes. Is there objection?

Mr. KEARNS. Mr. Speaker, I object. However, I withhold it for a moment in order to ask the gentleman on what subject he wishes to address the House?

Mr. KELLER. On the impeachment proceeding.

Mr. KEARNS. I object.

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HEARING BEFORE THE JUDICIARY COMMITTEE, SEPTEMBER 16, 1922.

COMMITTEE ON THE JUDICIARY,  
HOUSE OF REPRESENTATIVES,  
*Saturday, September 16, 1922.*

The committee met at 10.30 o'clock a. m., Hon. Andrew J. Volstead (chairman) presiding.

The CHAIRMAN. Mr. Keller, do you want to be heard on House Resolution 425, with reference to the impeachment of the Attorney General of the United States?

**STATEMENT OF HON. OSCAR E. KELLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA.**

**Mr. KELLER.** Mr. Chairman and gentlemen of the committee, I just desire to make a brief statement, which I shall read. I want to say to the committee that I am not a lawyer and that I ask for an attorney or counsel to help me in the proceedings. I understand that has been done previously in many cases where both sides were represented by counsel.

**The CHAIRMAN.** Do you mean that we are to furnish you an attorney?

**Mr. KELLER.** No; I will furnish my own attorney. I just want to be permitted to have counsel, as I see fit, at any time.

**Mr. MICHENER.** Do you want counsel here; is that the idea?

**Mr. KELLER.** Yes. I do not know whether I will need counsel to-day or not, as I will just make a brief statement. As I see it, the question before the committee now is my resolution and I would just like to read a short statement.

I desire at the outset to congratulate the Committee on the Judiciary for its prompt action upon my resolution impeaching Attorney General Daugherty. The committee has thus proved the falsity of the inspired news dispatches which stated that it was the purpose to bury the resolution without action and without hearings.

My purpose in seeking the impeachment of Attorney General Daugherty is based solely upon my desire to see the laws of the Nation enforced without fear and without favor and to preserve the dignity and integrity of the institutions of the United States Government.

This is a time when the very safety of the Nation demands that the American people be assured of the uprightness and impartiality of their public officials and of the administration of justice. Unless the people are convinced that this is a government of laws and not of men who arbitrarily and autocratically override constitutional limitations and trample upon the most sacred rights of American citizens, there is no stopping place short of anarchy and revolution.

**Mr. DYER (interposing).** Mr. Chairman, we are here for a simple purpose, if the gentleman will permit.

**Mr. KELLER.** I just ask permission to make a brief statement.

**Mr. DYER.** We are here with reference to this resolution, and the gentleman charged in his impeachment on September 11 certain specific things, the first charge being with reference to abridging freedom of speech.

**Mr. KELLER.** Mr. Chairman, may I say that I am just asking permission to make a short statement?

**Mr. DYER.** As a member of this committee, I would like to have what information you have or what proof you have of impeachable charges against the Attorney General of the United States; otherwise I am opposed to sitting here and listening to this statement.

**Mr. KELLER.** All right, Mr. Chairman; I stand absolutely on those charges as they were presented by me to the House. If they are true—and I am ready to back them up and sustain them at any time when you have—

**Mr. DYER (interposing).** Let us have the proof.



Mr. KELLER (continuing). When you have the proper constituted committee to hear such charges; that is, a committee with the power to subpoena witnesses and a committee where I can bring witnesses. As I understand it, this morning you are only here on the resolution. I take the position that all the committee can do this morning is to say whether those charges that I make, if they are true, come under the scope of impeaching Attorney General Daugherty.

Mr. DYER. What proof, Mr. Keller, have you to present to this committee to back up the charges which you are making?

Mr. KELLER. Mr. Chairman, I do not believe that is now before the committee. This is not a hearing. This is just a meeting on procedure.

Mr. BOIES. What is the length of your statement that you have there?

Mr. KELLER. There are just about two more paragraphs.

Mr. BOIES. Well, let us have that, and that will end it.

Mr. KELLER. I have no personal or partisan feeling against Mr. Daugherty. He and I are both Republicans, and I have had no personal interest in any case which is now or has been in the hands of the Department of Justice. But when an Attorney General of the United States not only refuses to prosecute individuals and corporations who have been indicted for the most outrageous offenses, but also uses his high office to break down and nullify acts of Congress and to invade fundamental constitutional rights, I have a right—I have a duty as a Representative in Congress—to seek to restrain his illegal activities and to remove him from office by the process of impeachment as prescribed in the Constitution.

I fully appreciate the gravity of the charges which I have preferred against the Attorney General. It is because of their very gravity and seriousness that I demanded upon the floor of the House not an investigation but the formal process of impeachment. I am prepared at the appropriate time to present witnesses and documentary evidence to sustain every charge that I make. But I demand that when such evidence is presented it shall be in public hearings, so that the American people may know whether or not my charges were sustained.

Now, Mr. Chairman, I come right back and say that the only question before the committee here now is——

The CHAIRMAN. We are the ones to pass upon what is before the committee.

Mr. KELLER. All right, but I can give my views on it, Mr. Chairman. I am ready whenever you say to present evidence, when you are prepared to hear such evidence, and when I can present such witnesses and when I can subpoena them.

The CHAIRMAN. I will give you my view of the situation. You should furnish sufficient evidence to show that there is something to investigate; otherwise we would not be in position to report the resolution to the House, we would not be in position to ask the House to give us authority to investigate anything. We have always proceeded on that theory in the past. For instance, when Mr. Welty attempted to impeach Judge Landis, the resolution was practically in the same form as the resolution in this matter. He was permitted to come before the committee and present his evidence of what he

charged was a violation of law. Now, naturally, if we go back to the House we have got to have something on which to base a request, something to substantiate the charges you make. The resolution itself is too general, it points to no particular act or acts.

Mr. KELLER. Mr. Chairman, will you point out to me where they are not specific enough?

The CHAIRMAN. There is nothing in them except general charges.

Mr. KELLER. I am ready to sustain them——

The CHAIRMAN. There is nothing specific in the charges. What is there in the resolution except just the charge of a violation of the law?

Mr. KELLER. That is enough.

The CHAIRMAN. No; it is not enough.

Mr. KELLER. I assume the responsibility of whether they are true or not, and I am ready to present evidence that they are true at the proper time.

The CHAIRMAN. You will have to furnish the committee some evidence.

Mr. KELLER. Now, point out to me what evidence you want and I will be glad to furnish it.

The CHAIRMAN. We can not point that out because we do not know what evidence you have got or what evidence you claim to have. You have simply made a general statement that he is guilty of certain things.

Mr. KELLER. Oh, no; my charges are very specific before the House.

The CHAIRMAN. You do not specify in what respect he has violated the law.

Mr. FOSTER. Mr. Keller, what do you say to the chairman's statement that this committee at this time ought to have enough evidence to make a prima facie case before we report back to the House?

Mr. BOIES. He expects to furnish testimony, as I understand it.

Mr. FOSTER. At this hearing?

Mr. KELLER. No; at a hearing where you have the power to subpoena witnesses. You can readily understand that in a case of this kind many men that I want to bring before this committee at the proper time would refuse to come unless you had the power to bring them here.

Mr. DYER. You could bring some affidavits here and make out a prima facie case in that way, and that is the usual procedure.

Mr. KELLER. Is that what you want?

Mr. DYER. You must present something to the committee. We are not going to report this resolution without some proof.

Mr. KELLER. Mr. Chairman, I am ready to do that. I am not prepared to-day to bring such proceedings, because I did not know what the committee really wanted; but I still claim that I made those charges and am ready to prove them before the proper committee.

Mr. DYER. Will you let me ask you a question with reference to these charges? First, you charge that the Attorney General is guilty of abridging freedom of speech. Upon what is that charge based?

Mr. KELLER. Now, you are holding a hearing right now, as I see it.

Mr. DYER. Of course; at your request.

Mr. KELLER. You want evidence, don't you?

Mr. DYER. We want some evidence.

Mr. FOSTER. Is it your notion of the legal procedure that by virtue of appearing here to-day that the committee automatically should report this resolution to the House?

Mr. KELLER. That the committee should take the charges that I make, and they are true until they are proven not true, and that the committee should then——

The CHAIRMAN. We have never proceeded on any such theory as that.

Mr. FOSTER. This is my first term on this committee and I do not know anything about what the procedure has been or what your notion of the procedure should be. Are we to assume that everything in your charges is true and then report the resolution back to the House, or should we have some testimony here to make out a *prima facie* case?

Mr. KELLER. I make those charges and I say they are true, and as a Member of Congress I say to you gentlemen that they are true, and all I ask of you men is that you get the proper committee so that I can present the evidence to prove that the charges are true.

Mr. DYER. Mr. Keller, by reason of your being a Member of Congress you have the privilege to rise in your place on the floor of the House and impeach the Attorney General, but now this matter has been referred to the committee and this committee must act in reference to the matter and must inform the House whether, in our judgment, there is a *prima facie* case sufficient to justify asking for a committee to summon witnesses, etc., and now the question is whether you have anything to present to justify this committee in so acting, as the chairman has just stated. That has been the procedure of this committee for years and years.

Mr. KELLER. I have nothing to present to the committee except what you have before you. My resolution is there.

Mr. DYER. That is nothing.

Mr. KELLER. That has been referred to you. What are you going to do with that resolution? That resolution, when I introduced it in the House, provided the machinery for the committee that I intended to appear before to present my case and my evidence to prove that my charges are true.

Mr. DYER. In answer to my question you said that you have nothing to present to this committee in support of your charge that the Attorney General has been guilty of abridging freedom of speech.

Mr. KELLER. Oh, yes; I have it, but am not ready to present it.

Mr. DYER. You are not ready to present anything to-day?

Mr. KELLER. Not what you ask me to present, because I feel that this is not the time to bring any proof before the committee.

The CHAIRMAN. The committee is the one to judge, to some extent, as to what it wants or what it needs for the purpose of acting upon this resolution.

Mr. KELLER. All right; you point out to me what you want and give me reasonable time, and I will furnish you whatever you want.

Mr. YATES. Is it your contention that this committee ought now to report this resolution favorably without any showing whatever by you? Is it your contention that we should report this resolution back to the House now and ask for authority to subpoena witnesses, etc., without any further showing?

Mr. KELLER. Mr. Chairman, I have made my charges, and they are true until they are proven not true, and all I am asking is for a proper committee with proper authority to hold hearings so that I may appear before it and present evidence which I think will prove my charges.

Mr. DYER. You have not answered the question of Governor Yates.

Mr. KELLER. I do not want to be placed in the position—I said a moment ago that I am willing, if you will point out what you want, and the chairman has partially pointed out to me what he thinks the committee ought to have—I am ready to furnish that at the proper time so I can appear with counsel. That is a legal question, and I may even want to consider whether I am right in my contention that the committee has power now or should go ahead now and pass this resolution.

Mr. FOSTER. Suppose this committee should adjourn to some date agreeable to the committee, at which time you could come back and start where we are now—would you be in shape to furnish, by affidavit or otherwise, enough testimony, if that be necessary, or, if that be the procedure, to establish a prima facie case?

Mr. KELLER. I will be glad to do that within a reasonable time.

Mr. DYER. Have you not anything at all in your possession now to substantiate the charges which you made against the Attorney General of the United States?

Mr. KELLER. Oh, yes; I have it.

Mr. DYER. Well, present it.

Mr. KELLER. I do not want to present it until I consult counsel again.

Mr. DYER. Have you anything to present to-day?

Mr. KELLER. I have it but I am not going to present it to-day on the ground——

Mr. DYER. What have you to present in support of your charge that the Attorney General has been guilty of abridging freedom of the press.

Mr. KELLER. Now, Mr. Chairman, I have answered you that I am prepared to appear before the proper committee. In my judgment this is not the proper time to present any evidence. I am only here asking for the machinery so that I can present the proper evidence.

The CHAIRMAN. In other words, you want us to go back to the House and get authority to subpoena witnesses, etc.

Mr. KELLER. If you want me, Mr. Chairman, I am willing, if you will give me time to prepare and consult counsel, to bring before you just what you want, if you will tell me exactly what you want.

Mr. THOMAS. I would suggest that this resolution empowers this committee to send for persons and papers.

The CHAIRMAN. No; it has not yet been passed by the House.

Mr. THOMAS. This resolution gives you that power, and this resolution has already passed the House.

The CHAIRMAN. No; it has just been referred to this committee.

Mr. THOMAS. I understand that, but how can a man prove anything unless you allow him to bring his witnesses here?

The CHAIRMAN. Oh, we have had a number of these proceedings and we have always required that proof should be furnished sufficient to raise at least a presumption that there is something to investigate.

Mr. THOMAS. But how can that proof be furnished without bringing witnesses here?

Mr. DYER. By furnishing affidavits, or he can tell us what he knows himself, or furnish affidavits or letters or something of that kind as preliminary proof in order to justify this committee in determining whether we should report the resolution favorably or not.

The CHAIRMAN. We have had a number of these proceedings, and the usual custom has been to ask those presenting charges to furnish some proof to the committee before the committee has asked for power to investigate.

Mr. THOMAS. I supposed your idea is that in a court of justice a man would have to detail what he expected to prove by his witnesses before the judge would allow his witnesses to be subpoenaed; is that the idea?

Mr. FOSTER. It seems to me it would be more like a preliminary hearing where the complainant would be expected to make out a *prima facie* case in order to warrant the bringing in of an indictment.

Mr. THOMAS. There are such things as preliminary hearings and there are such things as trials without any preliminary hearing or indictment.

Mr. FOSTER. I was just trying myself to find out what Mr. Keller wanted, and evidently he wants more time to consult an attorney before he presents any evidence or even attempts to make out a *prima facie* case.

Mr. THOMAS. As I understand it, he wants the privilege of bringing witnesses here, and I think he ought to be allowed that privilege.

The CHAIRMAN. He has that privilege now.

Mr. DYER. He can produce any witnesses he wants to produce to-day.

Mr. MICHENER. Mr. Keller, do you feel that by bringing before this committee at this time any of the evidence which you have and letting us have some idea of what you have, that that would prejudice your case when you came back later for a regular hearing?

Mr. KELLER. Well, Mr. Chairman, I take the position that this is not a hearing.

The CHAIRMAN. Certainly it is.

Mr. KELLER. It has not been in the past in many cases.

The CHAIRMAN. Sure it has. In every instance of this kind there has been a hearing.

Mr. DYER. Ever since this committee has been so constituted there has been this same procedure. You must present some proof to



justify the committee in asking the House to adopt a resolution to make the inquiry.

Mr. KELLER. Well, Mr. Chairman, give me reasonable time, so that I can consult with counsel, because many witnesses probably are here and we can get them very easily, but some are not. Give me reasonable time and I will furnish——

Mr. DYER (interposing). Can you produce any witness to-day in proof of any of the charges you make?

Mr. KELLER. No; I am simply here to-day by myself.

Mr. DYER. Is there anybody in the city you can produce to-day?

Mr. KELLER. Not to-day.

Mr. DYER. Where are these witnesses?

Mr. KELLER. I just said some are here and some are some distance from here.

Mr. DYER. What witnesses are here that you can prove anything by?

Mr. KELLER. Well, there will be witnesses probably from some of the departments of the Government.

Mr. DYER. Can you give us the names of any?

Mr. KELLER. Not this morning.

Mr. DYER. Can you give us the names of any witnesses who are here in the city by whom you can prove any of the charges?

Mr. KELLER. I am not ready to present any witnesses this morning.

Mr. DYER. You have no proof whatever to submit?

Mr. KELLER. Not this morning.

Mr. DYER. You made your charges on the floor of the House on the 11th of this month, and this is the 16th, and you asked for a prompt hearing, and the committee has granted your request.

Mr. KELLER. I have not everything that I want prepared, and I do not feel this is the time to do it.

Mr. DYER. The committee decides that matter.

Mr. KELLER. That is true.

Mr. MICHENER. What is your reason? Why can you not give us the facts now, even though it be a repetition to give them later? Do you feel you would prejudice your case later by giving the facts to-day?

Mr. KELLER. That may be the reason, but the main reason is that there are certain witnesses I want to appear here who are people that would not come unless they are subpoenaed to come.

Mr. DYER. Who are they?

Mr. KELLER. I am not going to say.

Mr. DYER. Give us the name of one of them?

Mr. KELLER. I will not give any names this morning.

Mr. FOSTER. May I say this, also, not knowing what the custom has been: Have you investigated the precedents enough to ascertain whether or not the chairman's statement is correct? In appearing in the way you have this morning, is it customary to give some evidence bearing upon the charges? Have you gone into the precedents enough to state to us whether or not that is the custom?

Mr. KELLER. I know that there are many cases where they have passed resolutions of impeachment and have appointed a committee

to have proper hearings. For instance, that was done in the Swayne case, when Judge Swayne was impeached.

The CHAIRMAN. My impression is that records from the Attorney General's office were submitted in the case of Judge Swayne.

Mr. KELLER. In that case they passed the resolution with hardly any hearing.

The CHAIRMAN. Before any action was taken by the committee, proof was submitted. So far as I know, in no instance has the committee ever reported a resolution of this kind without some proof being submitted.

Mr. KELLER. Well, give me a reasonable time and I will present proof.

Mr. SUMNERS. What do you consider a reasonable time?

Mr. KELLER. I am willing to leave that to the committee. It is for you to say what is reasonable.

Mr. SUMNERS. How much time would you want in which to make preparation for the preliminary hearing? I am referring now to the preparation for the preliminary hearing.

Mr. KELLER. Next Thursday would be satisfactory.

Mr. BOIES. Congress will have adjourned before then.

Mr. DYER. There will probably be no committee here at that time. I do not think we should allow the matter to go over for that length of time, or that we should postpone it to a time when there probably would not be any hearings until the next session of Congress. I am opposed to that. I think that when a Member of Congress comes in, and in the exercise of a high privilege impeaches a high officer of the Government, and one who is charged with a great responsibility, he should be prepared to offer some proof in support of his charges. If he can not do so, he ought to be courteous enough to withdraw his charges entirely.

Mr. KELLER. I am prepared to sustain them, but I thought that that should be done before a committee that had the right to subpoena witnesses. I thought that was the procedure.

Mr. CHRISTOPHERSON. What did you expect the committee to do to-day, or what was the purpose of the hearing?

Mr. KELLER. The resolution is before you. It was referred to this committee.

Mr. CHRISTOPHERSON. Do you think that we should report the resolution out without any proof whatever?

Mr. KELLER. I have made charges; they are true, and I can prove them.

Mr. DYER. You are not an attorney, as I understand it.

Mr. KELLER. No, sir.

Mr. DYER. But you know enough about law to know that if a man goes into court and charges another man with burglary and swears out a warrant against him, the court will not convict that man unless some proof is submitted in regard to the burglary. You know that much about law, do you not?

Mr. KELLER. This is not a hearing for the submission of any proof as I understand it.



Mr. DYER. The chairman stated to you very plainly that it was for the purpose of furnishing proof.

Mr. KELLER. I am willing, if given reasonable time to prepare and get counsel, to appear before the committee and bring whatever evidence you want.

Mr. YATES. You understand, of course, that it would be unfair to the Attorney General or anybody else to have a charge pending against him until the next session of Congress. You could come next Monday, could you not?

Mr. KELLER. No, sir; that would not be time enough.

Mr. DYER. Tell us why?

Mr. KELLER. I do not know that I am required to state my reason.

Mr. DYER. You are appearing as a witness before the committee, and we are entitled to determine this matter ourselves. It is for us to determine whether you have a case or not.

Mr. YATES. I do not think that anybody, whether a member of Congress or not, has a right to come in and make vague charges, unsupported by any proof, and then come in and say that he is not ready and have it hang over here month after month for some political reason or other.

Mr. KELLER. Somebody asked me what would be a reasonable time, and I said Thursday would be a reasonable time for furnishing what the committee wants.

Mr. MICHENER. You have stated several times here to-day that you have proof, but that you do not want to divulge it to-day. It strikes me that in an important matter of this kind, in which the entire Nation is interested, and in which one of the chief executives of the Nation is interested, if you have this proof prepared and simply do not want to divulge it because it might prejudice your case you could possibly by working on Sunday come in here Monday and give this committee, not all of your proof, but enough to make a case on which we could conscientiously go to Congress one way or the other. It strikes me that that would be no more than fair.

Mr. KELLER. Mr. Chairman, I have said that Thursday would be a reasonable time. It is up to the committee to do whatever it wants to do.

Mr. BOIES. It ought to be determined, and the committee wants to fix a date now.

Mr. KELLER. I said that Thursday would be a reasonable time for me.

Mr. BOIES. Everybody is anxious to go home.

Mr. DYER. Has the gentleman consulted an attorney in regard to this matter?

Mr. KELLER. I should want counsel.

Mr. DYER. Who was the gentleman who just spoke to you?

Mr. KELLER. I do not know.

Mr. McGRADY. I am Mr. McGrady, representing the American Federation of Labor.

Mr. DYER. I wanted to know who you were.

Mr. McGRADY. I would like to finish my statement. The American Federation of Labor has asked to be heard on this case. Presi-

dent Gompers, with the executive council of the American Federation of Labor, is at Atlantic City to-day but will be here next week. We have already made a request to be heard.

Mr. THOMAS. How would Tuesday suit you, gentlemen?

Mr. KELLER. It is a very short time between now and Tuesday, with Sunday coming in.

Mr. THOMAS. How would Wednesday suit?

Mr. KELLER. If the committee thinks that is a proper time——

Mr. DYER (interposing). Congress will probably adjourn on Wednesday.

Mr. FOSTER. If we should be here, would you be ready then?

Mr. KELLER. I will try.

Mr. FOSTER. The House may adjourn Wednesday.

Mr. YATES. It seems to me perfectly absurd to put it off so that it would not be possible to report to the House. Everybody knows that the House will probably be adjourned by Thursday.

Mr. THOMAS. I do not know. They have been adjourning for the last several months, but I have not seen it yet.

Mr. MARSH. Mr. Chairman, I wish to be heard.

The CHAIRMAN. Do you wish to make a statement in substantiation of the charges made by Mr. Keller?

Mr. MARSH. Yes, sir. Will the Chairman recognize me?

The CHAIRMAN. I suppose Mr. Keller has the floor.

Mr. KELLER. I yield to the gentleman.

Mr. MARSH. I should like to be heard on this resolution. I am Benjamin C. Marsh, managing director of the Farmers' National Council. Do you want the substance of what I will present to you?

The CHAIRMAN. Do you wish to be heard?

Mr. MARSH. I would like to be heard whenever you arrange a date for hearing it. I have quite a little testimony to present on this matter. I have been over 11 States of the Union, and am just back, and I am sure that what I have to say will be of vital interest in the elections this fall.

Mr. YATES. Now we are getting to the real crux of this thing.

Mr. KELLER. That statement has nothing to do with my action.

Mr. YATES. The plot thickens.

Mr. DYER. This proceeding is probably brought for political effect, and I do not think that we should waste any time upon the question. This resolution presents serious charges against a high official of the United States, and we should hear it.

Mr. KELLER. You set the day, and I will produce all the evidence you wish.

(Thereupon, the committee adjourned.)

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(The following resolution was adopted by the Judiciary Committee on the 23d day of November, 1922, and a copy thereof served upon Hon. Oscar E. Keller on the same date:)

Whereas the impeachment charges against Hon. H. M. Daugherty, Attorney General of the United States, made in the House of Representatives on the

11th day of September, 1922, by Hon. Oscar E. Keller, are pending, and in order to facilitate the hearing on December 4, to which the matter was adjourned: It is

*Resolved*, That the Hon. Oscar E. Keller be and is requested to present to this committee as early as it can be conveniently done and not later than the 1st of December, A. D. 1922, a statement of the facts showing the act or acts relied on as constituting the offenses charged, and that he is further requested to so far as possible name the persons involved in each transaction, the time and place thereof, and the witnesses by which such facts can be established, together with their names and places of residence;

*Resolved further*, That a copy of this resolution be forthwith given to Hon. Oscar E. Keller, as notice thereof.

(On the 1st of December Hon. Oscar E. Keller, pursuant to the foregoing request, filed specifications, to which, on the 4th of December, the Attorney General filed an answer. For convenience in examining the issues the answer to each specification is printed so as to follow the one to which it relates.)

#### SPECIFICATIONS AND ANSWERS.

##### SPECIFICATION NO. 1.

##### SUBDIVISIONS Nos. 1 to 11.

The said Harry M. Daugherty, being Attorney General of the United States, and having sworn to uphold the Constitution and to enforce the laws of the United States of America in an oath of office requiring him to "support and defend the Constitution of the United States against all enemies, foreign and domestic" and to "well and faithfully discharge the duties of the office" of Attorney General of the United States; and being particularly charged, as the chief law officer of the Government, with the duty of prosecuting those guilty of violating the Federal Statutes, has willfully and deliberately, ever since his appointment, used his best efforts to paralyze and destroy the activities of the Federal Trade Commission in its attempts to suppress and punish violations of the antitrust laws. Since the Attorney General assumed office more than 30 complaints of such violations have been made to him in writing by the Federal Trade Commission, accompanied by reports and testimony taken by the commission in support of these charges. In all such cases prosecutions have been recommended, but none have been initiated. In many of these cases the statute of limitations has now barred the offenses.

These illegal combinations are nation-wide. They infest almost every branch of industry, and their continuance is constituting the chief reason for the maintenance of the present high cost of living. These combinations are maintaining a corps of highly paid lobbyists in Washington to prevent prosecution, and have thus far succeeded in doing so.

The following are the specifications under this charge:

1. That the said Harry M. Daugherty has failed, neglected, and refused to prosecute the Southern Pine Association, a combination of

lumber manufacturers existing and being maintained for the purpose of unlawfully restraining trade and commerce among the several States and Territories of the United States, although he has been in possession of evidence that such an unlawful combination exists for a period of 16 months; that is, since July, 1920; such evidence having been gathered by the Federal Trade Commission and submitted to the Department of Justice in seven reports, as hereinafter set forth. That the yellow pine manufacturers associated together under the name "Southern Pine Association" were formerly associated under the name "Yellow Pine Manufacturers Association," with headquarters at St. Louis, Mo.; and that about the year 1909 the attorney general of the State of Missouri instituted quo warranto proceedings against several Missouri lumber manufacturing corporations who were members of this association, charging that the association was used as a medium for fixing prices and regulating production; and that as a result of these proceedings a judgment of ouster from the State of Missouri, together with heavy fines, was returned against the manufacturers; the final decree of the court was entered in June, 1914; since that time the manufacturers who were originally associated as "Yellow Pine Manufacturers Association" have been associated as "Southern Pine Association." That the new association took over the assets and assumed the liabilities of the old and that the survey of this association by the Federal Trade Commission revealed that it controlled 60 per cent of the entire Southern Yellow Pine Association in 1918. That the association regulates prices at which lumber shall be sold and is guilty of concerted action to restrict production. That the association cooperates with the West Coast Lumbermen's Association for the purpose of restricting competition. That the association fixes maximum prices for lumber and maintains these prices by agreement among its members. That the association, by means of agreements with retail lumber associations, restricts competition and maintains unjust and oppressive prices for lumber. That on September 4, 1919, the Attorney General of the United States requested the Federal Trade Commission to inquire into the activities of various lumber manufacturers' associations in the United States; and that, acting on this request, the Federal Trade Commission sent a large number of agents into the field and gathered evidence of the violation of Federal antitrust laws. That detailed analyses of the evidence relating to the activities of the Southern Pine Association were transmitted to the Department of Justice in seven reports as follows: (1) July, 1920, report on concerted action on prices; (2) December 17, 1920, report on concerted restriction of production; (3) November 26, 1920, report on cooperation between Southern Pine Association and West Coast Lumbermen's Association; (4) November 26, 1920, report on prices and profits on southern yellow pine; (5) December 15, 1920, origin and history of Southern Pine Association, together with report on cost accounting activities and other devices whereby uniform prices are maintained; (6) June 9, 1921, report on supplementary methods of standardizing prices; (7) September 15, 1921, report on reciprocal relations between Southern Pine Association and Retail Lumbermen's Association. That the activities of this association are summarized in a report of the Federal Trade Commission to the Senate Committee on Housing and Recon-

struction, submitted February 18, 1921, and that these activities include the regulation of production for the purpose of increasing prices, the fixing of prices by concerted action, the cooperation with fir manufacturers of the Pacific coast in raising prices so that prices for southern pine might be further advanced and the use of propaganda to uphold prices. That the evidence submitted by the Federal Trade Commission to the Department of Justice consists in a vast number of contracts, letters, telegrams, agreements, and other documents showing conclusively the illegal nature of this association. That this evidence shows that the Southern Pine Association maintains lobbyists in the various States in which it operates and in the city of Washington, D. C., for the purpose of preventing legislation for the relief of the people and for the purpose of preventing litigation, both criminal and civil, against the association and its members. That notwithstanding the evidence in the hands of the Department of Justice, the said Harry M. Daugherty has failed and neglected to take any action whatsoever against the said Southern Pine Association or the manufacturers and individuals who are parties to this unlawful conspiracy in restraint of trade, and that as a result the people of the United States have been oppressed by the high prices of lumber resulting from and maintained by the said unlawful conspiracy, although the said Harry M. Daugherty has sworn to enforce the laws of the United States of America.

2. That the said Harry M. Daugherty has failed and neglected to prosecute the Western Pine Manufacturers' Association, a combination of lumber manufacturers in Oregon, Washington, Montana, and Idaho, existing and being maintained for the purpose of unlawfully restraining trade and commerce among the several States and Territories of the United States; although he has been in possession of evidence that such an unlawful combination exists for a period of 26 months; that is, since September, 1920; such evidence having been gathered by the Federal Trade Commission and submitted to the Department of Justice in three reports as hereinafter set forth. That the Western Pine Manufacturers' Association is composed of about 50 concerns located in the so-called "inland empire," comprising the eastern parts of the States of Washington and Oregon, western Montana, and the State of Idaho; and controls about 80 per cent of the total output of lumber in these regions. That the activities of the Western Pine Manufacturers' Association have long been notorious, price lists having been compiled and issued by the association as early as 1917. That the association fixes prices by concerted action, restricts output by concerted action for the purpose of maintaining prices, maintains a box bureau through which prices of boxes and box material are fixed, has adopted a common freight basing point so that uniform prices will be effected at the destination point, has standardized discounts given wholesalers and taken concerted action to secure common recognition of such wholesalers as agree to maintain prices, and cooperates with the California Pine Manufacturers' Association and with other manufacturers of lumber for the purpose of maintaining unjust and oppressive prices on shop lumber. That on September 4, 1919, the Attorney General of the United States requested the Federal Trade Commission to inquire into the activities of the various lumbermen's associations in the



United States, and that, acting on this request, the Federal Trade Commission sent a large number of agents into the field and gathered evidence of the violation of the Federal antitrust laws. That detailed analyses of the evidence relating to the Western Pine Manufacturers' Association were transmitted to the Department of Justice in four reports as follows: (1) September 17, 1920, organization and activities of the association; (2) May 11, 1921, activities of Montana Lumbermen's Association of Kalispell, Mont.; (3) August 10, 1921, cooperation on price and production policies; (4) February 15, 1922, summary of activities of association in report of Federal Trade Commission made to both Houses of Congress on the same date, and also sent to the Attorney General. That the evidence submitted by the Federal Trade Commission to the Department of Justice consists in a vast number of contracts, agreements, letters, telegrams, and other documents showing conclusively the illegal nature of this association. That this evidence shows that the Western Pine Manufacturers' Association maintains highly paid lobbyists in the various States in which it operates and in the city of Washington, D. C., for the purpose of preventing litigation, both criminal and civil, against the association and its members. That notwithstanding the evidence in the hands of the Department of Justice the said Harry M. Daugherty has failed and neglected to take any action whatsoever against the said Southern Pine Association or the manufacturers and individuals who are parties to this unlawful conspiracy in restraint of trade, and that as a result the people of the United States have been oppressed by the high prices of lumber resulting from and maintained by the said unlawful conspiracy, although the said Harry M. Daugherty has sworn to enforce the laws of the United States of America.

3. That the said Harry M. Daugherty has failed and neglected to prosecute the Georgia-Florida Sawmill Association, of Jacksonville, Fla., a combination of lumber manufacturers existing and being maintained for the purpose of unlawfully restraining trade and commerce among the several States and Territories of the United States, although he has been in possession of evidence that such an unlawful combination exists for a period of 21 months—that is, since February 26, 1921—such evidence having been gathered by the Federal Trade Commission and submitted to the Department of Justice in five reports as hereinafter set forth. That the Georgia-Florida Sawmill Association is a combination of manufacturers of lumber which, in violation of the Federal Statutes, fixes prices by concerted action, restricts output, and otherwise violates the antitrust laws. That on September 4, 1919, the Attorney General of the United States requested the Federal Trade Commission to inquire into the activities of various lumber manufacturers' associations in the United States, and that, acting on this request, the Federal Trade Commission sent a large number of agents into the field and gathered evidence of the violation of the Federal antitrust laws. That detailed analyses of the evidence relating to the Georgia-Florida Sawmill Association were transmitted by the Federal Trade Commission to the Department of Justice in five reports, as follows: (1) February 26, 1921, activities of the association; (2) April 25, 1921, sales report of the association; (3) April 25, 1921, joint selling organizations controlled by Southeastern Lumbermen's Associations, including Yellow Pine Exchange; (4) April 25, 1921, relations and cooperation existing

between Georgia-Florida Sawmill Association and Southern Pine Association; (5) April 25, 1921, Southeastern Crosstie Manufacturers' Association. That the evidence submitted by the Federal Trade Commission to the Department of Justice consists of a large number of contracts, letters, telegrams, agreements, and other documents showing conclusively the illegal nature of this association. That this evidence shows that the Georgia-Florida Sawmill Association maintains lobbyists in the various States in which it operates and in the city of Washington, D. C., for the purpose of preventing legislation for the relief of the people and of preventing litigation, both criminal and civil, against the association and its members. That notwithstanding the evidence in the hands of the Department of Justice the said Harry M. Daugherty has failed and neglected to take any action whatever against the Georgia-Florida Sawmill Association or the manufacturers and individuals who are parties to this unlawful conspiracy in restraint of trade, and that as a result the people of the United States have been and are oppressed by unreasonably high prices of lumber resulting from and maintained by the said unlawful conspiracy, although the said Harry M. Daugherty has sworn to enforce the laws of the United States of America.

4. That the said Harry M. Daugherty has failed and neglected to prosecute the North Carolina Pine Association, a combination of lumber manufacturers existing and being maintained for the purpose of unlawfully restraining trade and commerce among the several States and Territories of the United States, although he has been in possession of evidence that such an unlawful combination exists for a period of 19 months—that is, since April 25, 1921—such evidence having been gathered by the Federal Trade Commission and submitted to the Department of Justice in four reports as hereinafter set forth. That the North Carolina Pine Association, a combination of manufacturers of lumber which, in violation of Federal statutes, fixes prices by concerted action, restricts output, and otherwise violates the antitrust laws. That on September 4, 1919, the Attorney General of the United States requested the Federal Trade Commission to inquire into the activities of various lumber manufacturers' associations in the United States, and that, acting on this request, the Federal Trade Commission sent a large number of agents into the field and gathered evidence of the violation of the Federal anti-trust laws. That detailed analyses of the evidence relating to the North Carolina Pine Association were transmitted by the Federal Trade Commission to the Department of Justice in four reports as follows: (1) April 25, 1921, history of the association; (2) April 25, 1921, price activities; (3) April 25, 1921, price discussion in association publications and at association meetings; (4) April 25, 1921, curtailment of production. That the evidence submitted by the Federal Trade Commission to the Department of Justice consists of a large number of contracts, letters, telegrams, agreements, and other documents showing conclusively the illegal nature of this association. That this evidence shows that the North Carolina Pine Association maintains highly paid lobbyists in the various States in which it operates and in the city of Washington, D. C., for the purpose of preventing legislation for the relief of the people and of preventing litigation, both criminal and civil, against the association and its members. That notwithstanding the evidence



United States, and that, acting on this request, the Federal Trade Commission sent a large number of agents into the field and gathered evidence of the violation of the Federal antitrust laws. That detailed analyses of the evidence relating to the Western Pine Manufacturers' Association were transmitted to the Department of Justice in four reports as follows: (1) September 17, 1920, organization and activities of the association; (2) May 11, 1921, activities of Montana Lumbermen's Association of Kalispell, Mont.; (3) August 10, 1921, cooperation on price and production policies; (4) February 15, 1922, summary of activities of association in report of Federal Trade Commission made to both Houses of Congress on the same date, and also sent to the Attorney General. That the evidence submitted by the Federal Trade Commission to the Department of Justice consists in a vast number of contracts, agreements, letters, telegrams, and other documents showing conclusively the illegal nature of this association. That this evidence shows that the Western Pine Manufacturers' Association maintains highly paid lobbyists in the various States in which it operates and in the city of Washington, D. C., for the purpose of preventing litigation, both criminal and civil, against the association and its members. That notwithstanding the evidence in the hands of the Department of Justice the said Harry M. Daugherty has failed and neglected to take any action whatsoever against the said Southern Pine Association or the manufacturers and individuals who are parties to this unlawful conspiracy in restraint of trade, and that as a result the people of the United States have been oppressed by the high prices of lumber resulting from and maintained by the said unlawful conspiracy, although the said Harry M. Daugherty has sworn to enforce the laws of the United States of America.

3. That the said Harry M. Daugherty has failed and neglected to prosecute the Georgia-Florida Sawmill Association, of Jacksonville, Fla., a combination of lumber manufacturers existing and being maintained for the purpose of unlawfully restraining trade and commerce among the several States and Territories of the United States, although he has been in possession of evidence that such an unlawful combination exists for a period of 21 months—that is, since February 26, 1921—such evidence having been gathered by the Federal Trade Commission and submitted to the Department of Justice in five reports as hereinafter set forth. That the Georgia-Florida Sawmill Association is a combination of manufacturers of lumber which, in violation of the Federal Statutes, fixes prices by concerted action, restricts output, and otherwise violates the antitrust laws. That on September 4, 1919, the Attorney General of the United States requested the Federal Trade Commission to inquire into the activities of various lumber manufacturers' associations in the United States, and that, acting on this request, the Federal Trade Commission sent a large number of agents into the field and gathered evidence of the violation of the Federal antitrust laws. That detailed analyses of the evidence relating to the Georgia-Florida Sawmill Association were transmitted by the Federal Trade Commission to the Department of Justice in five reports, as follows: (1) February 26, 1921, activities of the association; (2) April 25, 1921, sales report of the association; (3) April 25, 1921, joint selling organizations controlled by Southeastern Lumbermen's Associations, including Yellow Pine Exchange; (4) April 25, 1921, relations and cooperation existing

between Georgia-Florida Sawmill Association and Southern Pine Association; (5) April 25, 1921, Southeastern Crosstie Manufacturers' Association. That the evidence submitted by the Federal Trade Commission to the Department of Justice consists of a large number of contracts, letters, telegrams, agreements, and other documents showing conclusively the illegal nature of this association. That this evidence shows that the Georgia-Florida Sawmill Association maintains lobbyists in the various States in which it operates and in the city of Washington, D. C., for the purpose of preventing legislation for the relief of the people and of preventing litigation, both criminal and civil, against the association and its members. That notwithstanding the evidence in the hands of the Department of Justice the said Harry M. Daugherty has failed and neglected to take any action whatever against the Georgia-Florida Sawmill Association or the manufacturers and individuals who are parties to this unlawful conspiracy in restraint of trade, and that as a result the people of the United States have been and are oppressed by unreasonably high prices of lumber resulting from and maintained by the said unlawful conspiracy, although the said Harry M. Daugherty has sworn to enforce the laws of the United States of America.

4. That the said Harry M. Daugherty has failed and neglected to prosecute the North Carolina Pine Association, a combination of lumber manufacturers existing and being maintained for the purpose of unlawfully restraining trade and commerce among the several States and Territories of the United States, although he has been in possession of evidence that such an unlawful combination exists for a period of 19 months—that is, since April 25, 1921—such evidence having been gathered by the Federal Trade Commission and submitted to the Department of Justice in four reports as hereinafter set forth. That the North Carolina Pine Association, a combination of manufacturers of lumber which, in violation of Federal statutes, fixes prices by concerted action, restricts output, and otherwise violates the antitrust laws. That on September 4, 1919, the Attorney General of the United States requested the Federal Trade Commission to inquire into the activities of various lumber manufacturers' associations in the United States, and that, acting on this request, the Federal Trade Commission sent a large number of agents into the field and gathered evidence of the violation of the Federal anti-trust laws. That detailed analyses of the evidence relating to the North Carolina Pine Association were transmitted by the Federal Trade Commission to the Department of Justice in four reports as follows: (1) April 25, 1921, history of the association; (2) April 25, 1921, price activities; (3) April 25, 1921, price discussion in association publications and at association meetings; (4) April 25, 1921, curtailment of production. That the evidence submitted by the Federal Trade Commission to the Department of Justice consists of a large number of contracts, letters, telegrams, agreements, and other documents showing conclusively the illegal nature of this association. That this evidence shows that the North Carolina Pine Association maintains highly paid lobbyists in the various States in which it operates and in the city of Washington, D. C., for the purpose of preventing legislation for the relief of the people and of preventing litigation, both criminal and civil, against the association and its members. That notwithstanding the evidence

in the hands of the Department of Justice, the said Harry M. Daugherty has failed and neglected to take any action whatever against the North Carolina Pine Association or the manufacturers and individuals who are parties to this unlawful conspiracy in restraint of trade and that as a result the people of the United States have been and are oppressed by unreasonably high prices of lumber resulting from and maintained by the said unlawful conspiracy, although the said Harry M. Daugherty has sworn to enforce the laws of the United States of America.

5. That the said Harry M. Daugherty has failed and neglected to prosecute the Northern Pine Manufacturers' Association, a combination of lumber manufacturers existing and being maintained for the purpose of unlawfully restraining trade and commerce among the several States and Territories of the United States, although he has been in possession of evidence that such an unlawful combination exists for a period of 28 months—that is, since July, 1920—such evidence having been gathered by the Federal Trade Commission and submitted to the Department of Justice in six reports as hereinafter set forth. That the Northern Pine Manufacturers' Association is a combination of manufacturers of lumber which, in violation of Federal statutes, fixes prices by concerted action, restricts output, maintains standard prices and discounts, cooperates with other illegal combinations of lumber manufacturers to maintain unjust and oppressive prices on lumber throughout the United States, and otherwise violates the antitrust laws. That on September 4, 1919, the Attorney General of the United States requested the Federal Trade Commission to inquire into the activities of various lumber manufacturers' associations in the United States, and that, acting on this request, the Federal Trade Commission sent a large number of agents into the field and gathered evidence of wholesale violations of Federal antitrust laws. That detailed analyses of the evidence relating to the Northern Pine Manufacturers' Association were transmitted by the Federal Trade Commission to the Department of Justice in six reports as follows: (1) July, 1920, competitive conditions; (2) July 25, 1921, history and general activities of the association; (3) July 25, 1921, price activities; (4) July 25, 1921, cooperation among lumber manufacturers; (5) July 25, 1921, exchange of price information; (6) July 25, 1921, relation to the Government. That the evidence submitted by the Federal Trade Commission to the Department of Justice consists of a large number of contracts, agreements, letters, telegrams, and other documents, as well as affidavits and statements from many persons, showing conclusively the illegal nature of this association. That this evidence shows that the Northern Pine Manufacturers' Association maintains highly paid lobbyists in the various States in which it operates and in the city of Washington, D. C., for the purpose of preventing legislation for the relief of the people and of preventing litigation by governmental authorities, both State and national, in either the civil or criminal courts against the association and its members. That, notwithstanding the evidence on hand in the Department of Justice, the said Harry M. Daugherty has failed and neglected to take any action against the Northern Pine Manufacturers' Association or the manufacturers and the individuals who are parties to this unlawful conspiracy in restraint of trade; and that, as a result of this failure and neglect

on the part of the said Harry M. Daugherty, the people of the United States have been and are now being oppressed by unreasonably high prices of lumber resulting from and maintained by the said unlawful conspiracy, although the said Harry M. Daugherty has sworn to enforce the laws of the United States.

6. That the said Harry M. Daugherty has failed and neglected to prosecute the Southern Cypress Manufacturers' Association, a combination of lumber manufacturers existing and being maintained for the purpose of unlawfully restraining trade and commerce among the several States and Territories of the United States, although he has been in possession of evidence that such an unlawful combination exists for a period of 15 months—that is, since August 18, 1921—such evidence having been gathered by the Federal Trade Commission and submitted to the Department of Justice in a report of that date. That the Southern Cypress Manufacturers' Association is a combination of manufacturers of lumber which, in violation of Federal statutes, fixes prices by concerted action, restricts output, maintains standard prices and discounts, cooperates with other illegal combinations of lumber manufacturers to maintain unjust and oppressive prices on lumber throughout the United States, and otherwise violates the antitrust laws. That on September 4, 1919, the Attorney General of the United States requested the Federal Trade Commission to inquire into the activities of various lumber manufacturers' associations in the United States, and that, acting on this request, the Federal Trade Commission sent a large number of agents into the field and gathered evidence of wholesale, repeated, and flagrant violations of Federal antitrust laws. That a detailed analysis of the evidence relating to the Southern Cypress Manufacturers' Association was transmitted by the Federal Trade Commission to the Department of Justice in a report dated August 18, 1921. That the evidence submitted by the Federal Trade Commission to the Department of Justice consists of a large number of contracts, agreements, letters, telegrams, and other documents as well as affidavits and statements from many persons showing conclusively the illegal nature of this association. That this evidence shows that the Southern Cypress Manufacturers' Association maintains highly paid lobbyists in the various States in which it operates and in the city of Washington, D. C., for the purpose of preventing legislation for the relief of the people and of preventing litigation by governmental authorities, both State and national, in either the civil or criminal courts against the association and its members. That, notwithstanding the evidence on hand in the Department of Justice, the said Harry M. Daugherty has failed and neglected to take any action against the Southern Cypress Manufacturers' Association or the manufacturers and the individuals who are parties to this unlawful conspiracy in restraint of trade; and that, as a result of this failure and neglect on the part of the said Harry M. Daugherty, the people of the United States have been and are now being oppressed by unreasonably high prices of lumber resulting from and maintained by the said unlawful conspiracy, although the said Harry M. Daugherty has sworn to enforce the laws of the United States.

7. That the said Harry M. Daugherty has failed, neglected, and refused to prosecute the California Sugar & White Pine Manufacturers' Association, a combination of lumber manufacturers existing and



being maintained for the purpose of unlawfully restraining trade and commerce among the several States and Territories of the United States, although he has been in possession of evidence that such an unlawful combination exists for a period of five months—that is, since July 3, 1922—such evidence having been gathered by the Federal Trade Commission and submitted to the Department of Justice in a report of that date. That the California Sugar & White Pine Manufacturers' Association is a combination of manufacturers of lumber which, in violation of Federal statutes, fixes prices by concerted action, restricts output, maintains standard prices and discounts, cooperates with other illegal combinations of lumber manufacturers to maintain unjust and oppressive prices on lumber throughout the United States, and otherwise violates the antitrust laws. That on September 4, 1919, the Attorney General of the United States requested the Federal Trade Commission to inquire into the activities of various lumber manufacturers' associations in the United States, and that, acting on this request, the Federal Trade Commission sent a large number of agents into the field and gathered evidence of wholesale, repeated, and flagrant violations of Federal antitrust laws. That a detailed analysis of the evidence relating to the California Sugar & White Pine Manufacturers' Association was transmitted by the Federal Trade Commission to the Department of Justice in a report dated July 3, 1922. That the evidence submitted by the Federal Trade Commission to the Department of Justice consists of a large number of contracts, agreements, letters, telegrams, and other documents, as well as affidavits and statements from many persons showing conclusively the illegal nature of this association. That this evidence shows that the California Sugar & White Pine Manufacturers' Association maintains highly paid lobbyists in the various States in which it operates and in the city of Washington, D. C., for the purpose of preventing legislation for the relief of the people and of preventing litigation by governmental authorities, both State and National, in either the civil or criminal courts against the association and its members. That notwithstanding the evidence on hand in the Department of Justice, the said Harry M. Daugherty has failed and neglected to take any action against the California Sugar & White Pine Manufacturers' Association or the manufacturers and the individuals who are parties to this unlawful conspiracy in restraint of trade; and that, as a result of this failure and neglect on the part of the said Harry M. Daugherty, the people of the United States have been and are now being oppressed by unreasonably high prices of lumber resulting from and maintained by the said unlawful conspiracy.

8. That the said Harry M. Daugherty has failed, neglected, and refused to prosecute the Redwood Manufacturers' Association (manufacturers of California redwood), the California Redwood Association, the Redwood Sales Co., the Redwood Shingle Association, and the Feather River Pine Association, all of which are combinations of lumber manufacturers in California existing and being maintained for the purpose of unlawfully restraining trade and commerce among the several States and Territories of the United States, although he has been in possession of evidence that such unlawful combinations exist for a period of four months—that is, since July 26, 1922—such evidence having been gathered by the Federal Trade Commission and

submitted to the Department of Justice in a report of that date. That the above-named associations constitute a combination of manufacturers of lumber which, in violation of Federal statutes, fixes prices by concerted action, restricts output, maintains standard prices and discounts, cooperates with other illegal combinations of lumber manufacturers to maintain unjust and oppressive prices on lumber throughout the United States, and otherwise violates the antitrust laws. That on September 4, 1919, the Attorney General of the United States requested the Federal Trade Commission to inquire into the activities of various lumber manufacturers' associations in the United States, and that, acting on this request, the Federal Trade Commission sent a large number of agents into the field and gathered evidence of wholesale, repeated, and flagrant violations of Federal antitrust laws. That a detailed analysis of the evidence relating to the above associations was transmitted by the Federal Trade Commission to the Department of Justice in a report dated July 26, 1922. That the evidence submitted by the Federal Trade Commission to the Department of Justice consists of a large number of contracts, agreements, letters, telegrams, and other documents, as well as affidavits and statements from many persons, showing conclusively the illegal nature of the above-mentioned associations. That this evidence shows that the above-mentioned associations maintain highly paid lobbyists in the various States in which they operate and in the city of Washington, D. C., for the purpose of preventing legislation for the relief of the people and of preventing litigation by governmental authorities, both State and National, in either the civil or criminal courts against the associations and their members. That, notwithstanding the evidence on hand in the Department of Justice, the said Harry M. Daugherty has failed and neglected to take any action against the above-mentioned associations or the manufacturers and the individuals who are parties to this unlawful conspiracy in restraint of trade; and that, as a result of this failure and neglect on the part of the said Harry M. Daugherty, the people of the United States have been and are now being oppressed by unreasonably high prices of lumber resulting from and maintained by the said unlawful conspiracy.

9. That the said Harry M. Daugherty has failed, neglected, and refused to prosecute the Northern Hemlock & Hardwood Manufacturers' Association, a combination of manufacturers of hemlock and hardwoods in Wisconsin and upper Michigan, existing and being maintained for the purpose of unlawfully restraining trade and commerce among the several States and Territories of the United States, although the Department of Justice have been in possession of evidence that such an unlawful combination exists for a period of four months—that is, since July 26, 1922—such evidence having been gathered by the Federal Trade Commission and submitted to the Department of Justice in a report of that date. The above-mentioned combination consists of lumber manufacturers of the State of Wisconsin and the Upper Peninsula of Michigan, and for many years has been notorious as a combination that maintains prices by use of a uniform price list. The combination operates through a committee on prices that meets every month, restricts output, cooperates with other illegal combinations of lumber manufacturers to maintain unjust and excessive prices on lumber through-

being maintained for the purpose of unlawfully restraining trade and commerce among the several States and Territories of the United States, although he has been in possession of evidence that such an unlawful combination exists for a period of five months—that is, since July 3, 1922—such evidence having been gathered by the Federal Trade Commission and submitted to the Department of Justice in a report of that date. That the California Sugar & White Pine Manufacturers' Association is a combination of manufacturers of lumber which, in violation of Federal statutes, fixes prices by concerted action, restricts output, maintains standard prices and discounts, cooperates with other illegal combinations of lumber manufacturers to maintain unjust and oppressive prices on lumber throughout the United States, and otherwise violates the antitrust laws. That on September 4, 1919, the Attorney General of the United States requested the Federal Trade Commission to inquire into the activities of various lumber manufacturers' associations in the United States, and that, acting on this request, the Federal Trade Commission sent a large number of agents into the field and gathered evidence of wholesale, repeated, and flagrant violations of Federal antitrust laws. That a detailed analysis of the evidence relating to the California Sugar & White Pine Manufacturers' Association was transmitted by the Federal Trade Commission to the Department of Justice in a report dated July 3, 1922. That the evidence submitted by the Federal Trade Commission to the Department of Justice consists of a large number of contracts, agreements, letters, telegrams, and other documents, as well as affidavits and statements from many persons showing conclusively the illegal nature of this association. That this evidence shows that the California Sugar & White Pine Manufacturers' Association maintains highly paid lobbyists in the various States in which it operates and in the city of Washington, D. C., for the purpose of preventing legislation for the relief of the people and of preventing litigation by governmental authorities, both State and National, in either the civil or criminal courts against the association and its members. That notwithstanding the evidence on hand in the Department of Justice, the said Harry M. Daugherty has failed and neglected to take any action against the California Sugar & White Pine Manufacturers' Association or the manufacturers and the individuals who are parties to this unlawful conspiracy in restraint of trade; and that, as a result of this failure and neglect on the part of the said Harry M. Daugherty, the people of the United States have been and are now being oppressed by unreasonably high prices of lumber resulting from and maintained by the said unlawful conspiracy.

8. That the said Harry M. Daugherty has failed, neglected, and refused to prosecute the Redwood Manufacturers' Association (manufacturers of California redwood), the California Redwood Association, the Redwood Sales Co., the Redwood Shingle Association, and the Feather River Pine Association, all of which are combinations of lumber manufacturers in California existing and being maintained for the purpose of unlawfully restraining trade and commerce among the several States and Territories of the United States, although he has been in possession of evidence that such unlawful combinations exist for a period of four months—that is, since July 26, 1922—such evidence having been gathered by the Federal Trade Commission and



submitted to the Department of Justice in a report of that date. That the above-named associations constitute a combination of manufacturers of lumber which, in violation of Federal statutes, fixes prices by concerted action, restricts output, maintains standard prices and discounts, cooperates with other illegal combinations of lumber manufacturers to maintain unjust and oppressive prices on lumber throughout the United States, and otherwise violates the antitrust laws. That on September 4, 1919, the Attorney General of the United States requested the Federal Trade Commission to inquire into the activities of various lumber manufacturers' associations in the United States, and that, acting on this request, the Federal Trade Commission sent a large number of agents into the field and gathered evidence of wholesale, repeated, and flagrant violations of Federal antitrust laws. That a detailed analysis of the evidence relating to the above associations was transmitted by the Federal Trade Commission to the Department of Justice in a report dated July 26, 1922. That the evidence submitted by the Federal Trade Commission to the Department of Justice consists of a large number of contracts, agreements, letters, telegrams, and other documents, as well as affidavits and statements from many persons, showing conclusively the illegal nature of the above-mentioned associations. That this evidence shows that the above-mentioned associations maintain highly paid lobbyists in the various States in which they operate and in the city of Washington, D. C., for the purpose of preventing legislation for the relief of the people and of preventing litigation by governmental authorities, both State and National, in either the civil or criminal courts against the associations and their members. That, notwithstanding the evidence on hand in the Department of Justice, the said Harry M. Daugherty has failed and neglected to take any action against the above-mentioned associations or the manufacturers and the individuals who are parties to this unlawful conspiracy in restraint of trade; and that, as a result of this failure and neglect on the part of the said Harry M. Daugherty, the people of the United States have been and are now being oppressed by unreasonably high prices of lumber resulting from and maintained by the said unlawful conspiracy.

9. That the said Harry M. Daugherty has failed, neglected, and refused to prosecute the Northern Hemlock & Hardwood Manufacturers' Association, a combination of manufacturers of hemlock and hardwoods in Wisconsin and upper Michigan, existing and being maintained for the purpose of unlawfully restraining trade and commerce among the several States and Territories of the United States, although the Department of Justice have been in possession of evidence that such an unlawful combination exists for a period of four months—that is, since July 26, 1922—such evidence having been gathered by the Federal Trade Commission and submitted to the Department of Justice in a report of that date. The above-mentioned combination consists of lumber manufacturers of the State of Wisconsin and the Upper Peninsula of Michigan, and for many years has been notorious as a combination that maintains prices by use of a uniform price list. The combination operates through a committee on prices that meets every month, restricts output, cooperates with other illegal combinations of lumber manufacturers to maintain unjust and excessive prices on lumber through-

out the United States, and otherwise violates the statutes of the United States. That on September 4, 1919, the Attorney General of the United States requested the Federal Trade Commission to inquire into the activities of various lumber manufacturers' associations in the United States, and that, acting on this request, the Federal Trade Commission sent a large number of agents into the field and gathered evidence of wholesale, repeated, and flagrant violations of the Federal antitrust laws. That a detailed analysis of the evidence relating to the above combination was transmitted by the Federal Trade Commission to the Department of Justice in a report submitted July 26, 1922. That the evidence submitted by the Federal Trade Commission to the Department of Justice consists of a large number of contracts, agreements, letters, telegrams, price lists, and other documents, as well as affidavits and statements from many persons, showing conclusively the illegal nature of the above-mentioned combination. That this evidence shows that the Northern Hemlock & Hardwood Manufacturers' Association maintains highly paid lobbyists in the States in which it operates and in the city of Washington, D. C., for the purpose of preventing legislation for the relief of the people and of preventing civil and criminal action against the association and its members by governmental authorities, both State and National. That, notwithstanding the evidence in possession of the Department of Justice, the said Harry M. Daugherty has failed and neglected to take any action whatever against the above-named association or the corporations and individuals who are parties to this unlawful conspiracy in restraint of trade; and that, as a result of this failure and neglect on the part of the said Harry M. Daugherty, the people of the United States have been and are now being oppressed by unreasonably high prices of lumber resulting from and being maintained by the said unlawful conspiracy.

10. That the said Harry M. Daugherty has failed, neglected, and refused to prosecute the Michigan Hardwood Manufacturers' Association, an illegal combination existing and being maintained for the purpose of unlawfully restraining trade and commerce among the several States and Territories of the United States, although the Department of Justice has been in possession of evidence that such an unlawful combination exists for a period of eight months; that is, since January 10, 1922; such evidence having been gathered by the Federal Trade Commission and published in a preliminary report made to both Houses of Congress on that date. That the above-named combination consists of manufacturers of lumber in the lower peninsula of Michigan, producing both hemlock and hardwood lumber, and since its organization in 1906 has been notorious as a price-fixing combination. That the combination operates to restrict output, fix prices, cooperate with other illegal combinations of lumber manufacturers to maintain unjust and excessive prices on lumber throughout the United States, and otherwise violates the statutes of the United States. That on September 4, 1919, the Attorney General of the United States requested the Federal Trade Commission to inquire into the activities of various lumber manufacturers' associations in the United States; and that acting on this request the Federal Trade Commission sent a large number of agents into the field, and gathered evidence of wholesale, repeated, and flagrant violations of the Federal

antitrust laws. That a preliminary analysis of the evidence was published in a report made to Congress January 10, 1921, by the Federal Trade Commission and that subsequently the evidence was transmitted to the Department of Justice. That the evidence consists of a large number of contracts, agreements, letters, telegrams, price lists, and other documents, as well as affidavits and statements from many persons, showing conclusively the illegal nature of the above-mentioned combination. That this evidence shows that the Michigan Hardwood Manufacturers' Association maintains highly paid lobbyists in the State of Michigan and in the city of Washington, D. C., for the purpose of preventing legislation for the relief of the people and of preventing civil and criminal action against the association and its members by governmental authorities both State and National. That the evidence shows that a lobbyist in the employ of the Michigan Hardwood Manufacturers' Association has been negotiating with the Department of Justice to secure a sanction for the price-fixing scheme of the combination. That notwithstanding the evidence in the possession of the Department of Justice, the said Harry M. Daugherty has failed and neglected to take any action whatever against the above-named association or the corporations and individuals who are parties to this unlawful conspiracy in restraint of trade; and that, as a result of this failure and neglect on the part of the said Harry M. Daugherty, the people of the United States have been and are now being oppressed by unreasonably high prices of lumber resulting from and being maintained by the said unlawful conspiracy.

11. That the said Harry M. Daugherty has failed, neglected, and refused to prosecute the National Lumber Manufacturers' Association, a gigantic illegal combination of lumber manufacturers and associations controlling a huge percentage of the lumber output of the United States, existing and being maintained for the purpose of aiding and abetting a conspiracy to unlawfully restrain trade and commerce among the several States and Territories of the United States, although the Department of Justice has been in possession of evidence that such a combination exists for a period of 11 months—that is, since January, 1922—such evidence having been gathered by the Federal Trade Commission and published in a preliminary report made to both Houses of Congress on January 10, 1922. That the National Lumber Manufacturers' Association is an organization made up of 11 regional associations of lumber manufacturers, each one of which controls to a large degree the entire output of lumber in a designated area of the United States, the lumber consumed within the United States coming from approximately 10 different regions; the output in one of which is controlled by two associations. That each one of the 11 associations is a combination in restraint of trade and that the illegal and oppressive measures of each and all of the associations are further strengthened and coordinated by the National Lumber Manufacturers' Association, which enables each and all of the combinations mentioned to control lumber prices over the entire area of the United States. That the National Lumber Manufacturers' Association restricts output, maintains unreasonably oppressive and excessive prices on lumber throughout the United States, and otherwise violates the statutes of the United States. That on September 4, 1919, the Attorney General of the United

States requested the Federal Trade Commission to inquire into the activities of various lumber manufacturers' associations in the United States, and that, acting on this request, the Federal Trade Commission sent a large number of agents into the field and gathered evidence of wholesale, repeated, continuing, and flagrant violations of the Federal antitrust laws. That a preliminary analysis of the evidence was published in a report made by the Federal Trade Commission to the Congress of the United States January 10, 1921, and subsequently transmitted to the Department of Justice. That the evidence consists of a large number of contracts, agreements, letters, telegrams, price lists, and other documents, as well as affidavits and statements from many persons showing conclusively the illegal nature of the above-mentioned combination. That this evidence shows that the National Lumber Manufacturers' Association maintains in the city of Washington, D. C., a highly paid lobbyist and an extensive organization for the purpose of preventing legislation for the relief of the people and of preventing civil and criminal actions against the association and its members by the executive departments of the United States Government, of securing legislation and executive rulings in furtherance of the conspiracy in restraint of trade, and of deceiving the legislative and executive departments of the Government. That the evidence shows that among the activities of this extensive lobby was the securing from Congress of an enactment that enabled lumber manufacturers to compute costs upon the basis of market value of stumpage as of March 1, 1913, rather than the actual cost of said stumpage; and that this activity resulted not only in a huge increase in the price of lumber because of the advanced basis of cost but a loss annually to the United States Government of \$200,000,000 in excess-profits tax. That the evidence shows that the National Lumber Manufacturers' Association endeavored to secure and did secure the appointment of its own representative in various bureaus of the Government whose activities affected the lumber manufacturers; and that some of the lumber manufacturers themselves were so disgusted with the activities of the Washington lobby that they condemned it in unmeasuring terms. That the evidence shows that paid lobbyists in the employ of the National Lumber Manufacturers' Association have been in consultation with the Department of Justice to secure governmental sanction for the price-fixing schemes of this illegal combination. That notwithstanding the evidence in the possession of the Department of Justice, the said Harry M. Daugherty has failed and neglected to take any action whatever against the above-named association or the corporations and individuals who are parties to this unlawful conspiracy in restraint of trade, and that, as a result of this failure and neglect on the part of the said Harry M. Daugherty, the people of the United States have been and are now being oppressed by unreasonably high prices of lumber resulting from and being maintained by the said unlawful conspiracy.



## SPECIFICATION NO. 1.

## SUBDIVISION NOS. 1 TO 11—ANSWER.

*To the honorable the Judiciary Committee of the House of Representatives of the Congress of the United States, the Hon. Andrew J. Volstead, chairman.*

GENTLEMEN: In the matter of certain charges against the Attorney General of the United States filed with your committee late Friday afternoon, December 1, a copy containing about 49 pages of specifications came to the personal attention of the Attorney General at 6 o'clock p. m. on that day.

Before taking up in order the various specifications, the Attorney General desires to call the attention of your committee to certain considerations which he feels must govern and control his conduct in connection with the pending matters.

First, certain important matters which involve the vital interests of the Government are now in process of preparation for presentation to the proper tribunals, praying for relief in large and important governmental matters. With reference to these matters the Attorney General feels that he can not make public the evidence in his hands or the course or procedure which he proposes to adopt to secure the relief to which the Government is entitled in the premises. To do so would be highly injurious to the interests of the people and would destroy any possibility of successful ultimate prosecution.

Second, in view of the attacks upon the Attorney General and the evident attempt to discredit in advance the activities of the Department of Justice by the parties and influences obviously active in the instigation and promulgation of these charges, and, further, in view of the character of the charges themselves and the conclusions of law and the prejudicial and irrelevant matter contained in said charges, the Attorney General can not escape the conclusion that the sole object and purpose of this proceeding is not to remove him from office on any of the grounds set up in said paper writing, but is in the nature avowedly of an attempt to use the extraordinary and unusual procedure applicable to impeachment matters in the nature of a bill of discovery to compel by this method the publication and the disclosure in advance of the evidence upon which the Government relies, and must rely, in the investigation and prosecution of cases of the greatest importance to the Government. The Attorney General believes, and so begs leave to submit to your honorable committee, that this extraordinary proceeding is inspired more by a desire to protect those charged, and those who will be charged, with violating the law than to aid the Department of Justice in the prosecution of "grafters, profiteers, and those who have defrauded their Government during the emergencies of war." In making these statements, the Attorney General reserves and most unequivocally guards against any thought or suggestion of criticism of your honorable committee in any action or proceeding which it may deem proper to take in the premises.

The first specification, subdivisions 1 to 23, charges alleged failure of the Department of Justice to prosecute particular violations of the antitrust act referred to it by the Federal Trade Commission. These specifications, couched in the most general terms, charge the De-

partment of Justice with failing to prosecute immediately certain matters referred to it by the Federal Trade Commission. These charges initially raise the question of the legal relation existing between the Federal Trade Commission and the Department of Justice in such cases, and in this connection reference is respectfully made to the fact that when cases are referred to the Department of Justice by the Federal Trade Commission they are at once investigated and considered by the Department of Justice, to the end that the department may agree or disagree, as the case may be, with the facts and the legal conclusions so gathered and submitted by the Federal Trade Commission. Further in this connection, the language of the Hon. Nelson B. Gaskill, chairman of the Federal Trade Commission, under date of August 10, 1922, in answer to a communication by Senator Robert M. La Follette, inquiring into the status of these said several matters, is apt and pertinent:

In submitting to you the information which you have requested, it is proper to explain and necessary to be understood that in no instance does the Federal Trade Commission set up its own judgment as a criterion for the Department of Justice, nor in referring any matters to that department is it expected by the Federal Trade Commission that any expression of opinion by it, or fact of reference being made, will have a determinative effect upon the consideration of the subject matter by the Department of Justice. In other words, in the reference of these matters to the Department of Justice and in this statement to you, there is no basis for a critical inference because of any divergence of views between these two governmental agencies upon any of the issues involved.

In view of the fact that the Federal Trade Commission does not consider any difference of opinion between said commission and the Department of Justice, or the failure of the Department of Justice to adopt its conclusions on matters referred to it as a ground for criticism, it is submitted that such matters can not be properly considered as a basis for impeachment proceedings.

Many of the matters referred to in the various reports of the Federal Trade Commission are in process of further investigation and are still pending in the department, looking to prosecution under criminal statutes, as well as proceedings in equity under civil statutes. The Attorney General takes this occasion specifically and categorically to deny the charges, insinuations, and innuendoes that the Department of Justice has in any way attempted to obstruct, destroy, paralyze, or interfere with the efforts and activities of the Federal Trade Commission in its efforts to enforce the antitrust laws.

In connection with this matter the Attorney General wishes to call the attention of your committee to the fact that since he has been in office, viz, since March 4, 1921, the Department of Justice has commenced under the antitrust laws proportionately as many actions as, if not more, than during the administration of any other Attorney General since the passage of the Sherman Antitrust Act. The exact figures are as follows:

	Cases.
President Harrison, 4 years.....	7
President Cleveland, 4 years.....	8
President McKinley, 4 years.....	3
President Roosevelt, approximately 8 years.....	44
President Taft, 4 years.....	80
President Wilson, 8 years.....	85
President Harding, 20 months.....	32

The cases so commenced are as follows:

1. United States *v.* Kern et al.
2. United States *v.* American Coated Paper Co. et al.
3. \*United States *v.* James B. Clow & Sons et al.
4. United States *v.* American Lithographic Co. et al.
5. \*United States *v.* Chicago Master Steam Fitters' Association.
6. United States *v.* Louis Biegler Co. et al.
7. United States *v.* Cement Manufacturers' Protective Association et al.
8. \*United States *v.* Atlas Portland Cement Co. et al.
9. \*United States *v.* Alexander & Reid Co. et al.
10. \*United States *v.* Andrews Lumber & Mill Co. et al.
11. \*United States *v.* Atlantic Terra Cotta Co. et al.
12. \*United States *v.* The American Terra Cotta & Ceramic Co. et al. (Southern district of New York.)
13. United States *v.* Hiram Norcross et al.
14. United States *v.* Mid West Cement Credit & Statistical Bureau et al.
15. \*United States *v.* Johnston Brokerage Co. et al.
16. \*United States *v.* The Central Foundry Co. et al.
17. United States *v.* Cement Securities Co. et al.
18. United States *v.* Tile Manufacturers' Credit Association et al.
19. United States *v.* National Enameling & Stamping Co. et al.
20. United States *v.* Bricklayers', Masons' & Plasterers' International Union of America et al.
21. \*United States *v.* Lehigh Portland Cement Co. et al.
22. \*United States *v.* American Window Glass Co. et al.
23. United States *v.* Wickwire Spencer Steel Corporation et al.
24. \*United States *v.* American Terra Cotta & Ceramic Co. et al. (Northern district of Illinois.)
25. United States *v.* United Gas Improvement Co. et al.
26. United States *v.* Trenton Potteries Co. et al.
27. United States *v.* A. Schraders' Sons, (Inc.).
28. United States *v.* Railway Employees' Department of the American Federation of Labor et al.
29. United States *v.* Fur Dressers' & Fur Dyers' Association (Inc.).
30. United States *v.* Richard Hudnut (Inc.).
31. \*United States *v.* C. C. Handley, president Machinists' Union, Houston, Tex., et al.
32. \*United States *v.* United Gas Improvement Co. et al.

The "\*" immediately preceding the title indicates a criminal action.

Furthermore, the case of American Column & Lumber Co. *v.* United States, which involved many phases of the activities of trade associations, was reargued and a decision obtained upholding the Government's contention. And, in the case of United States *v.* Alexander & Reid Co., the Tile case, for the first time in the enforcement of the antitrust laws, defendants were sentenced to and served terms in jail.

The charges sought to be alleged in specification 1, subdivisions 1-11, inclusive, relate to what might be denominated the Lumber cases. These cases, each and all, have been and are now being duly investigated by the Department of Justice. They are nation-wide in their scope and the evidence pertinent to the issues involved is widely scattered and is highly technical in character. Many of these cases are now ready for prosecution, and in due course and at the proper time, in the orderly procedure of the Department of Justice, such action or disposition of these matters will be taken as the facts and the law require.

#### SUBDIVISION No. 12.

12. That the said Harry M. Daugherty has failed, neglected, and refused to prosecute the American Tobacco Co., P. Lorillard Co., and Liggett & Myers Tobacco Co., and others, although the three



mentioned companies have been for a number of years and are now actively engaged in a conspiracy in restraint of trade and commerce among the several States and Territories of the United States and between the States and the District of Columbia, and although the Department of Justice has been in possession for 11 months of conclusive evidence that such a conspiracy exists, such evidence having been gathered by the Federal Trade Commission in response to a Senate resolution adopted August 9, 1921, and submitted to the President of the Senate on January 17, 1922. That the above-mentioned three companies, successor companies of the old tobacco combination which was dissolved under an antitrust decree in 1911, have each been engaged in conspiracy with numerous sectional and local jobbers' associations to keep up the prices of tobacco products in the United States through price agreements, intimidation, and other despotic, oppressive, and unlawful means. That during the same period the three above-mentioned companies have been engaged in a conspiracy to depress the price of leaf tobacco and to so manipulate the demand for it that many growers of tobacco have been forced into bankruptcy. That notwithstanding the statute which gives the Federal Trade Commission the right of access to the files of corporations and other business enterprises under investigation, two of the above-mentioned companies refused access to their files when it was demanded by the Federal Trade Commission and all the correspondence and minutes of the New England Tobacco Conference, an important jobbers' association, were willfully and designedly destroyed a few days before representatives of the Federal Trade Commission visited the offices of the secretary. That the Department of Justice has neglected, failed, and refused to cooperate with the Federal Trade Commission to enforce inspection of the files of the two above-named companies by the Federal Trade Commission, and has neglected, failed, and refused to prosecute those guilty of the willful destruction of papers mentioned above. That, beginning with the spring of 1921, there has been maintained a nationwide movement having for its object the organization of jobbers' associations to fix prices by eliminating competition among jobbers; and that this movement was fostered and aided principally by the American Tobacco Co., P. Lorillard Co., Liggett & Myers Tobacco Co., Tobacco Products Corporation, Bloch Bros. Tobacco Co., and Scotten-Dillon Co. That in furtherance of this conspiracy manufacturers and jobbers refused to sell to those jobbers who cut prices below a fixed agreed price; that such agreed prices were maintained by circulars openly circulated and by blacklists as well as by signed agreements. That the conspiracy to depress the price of leaf tobacco in the hand of the grower was fully described in a report to the House of Representatives by the Federal Trade Commission on December 11, 1920, which recommended that the temporary injunction against the successor companies to the Tobacco Trust prohibiting their use of common purchasing agencies for leaf tobacco be revived and made permanent, and that they also be prohibited from purchasing leaf tobacco except under their own name; which report and recommendation was duly submitted to the Attorney General on December 11, 1920, and again urgently renewed on January 17, 1922. That, because of the illegal conspiracies above described, although the

price of leaf tobacco has fallen considerably since 1919, the prices charged by manufacturers for tobacco products have remained practically constant at the high levels obtained in that year. That, as a result of these conspiracies, the tobacco companies have been able to declare huge dividends in stock and cash. That evidence of the conspiracies is supported by hundreds of letters written by manufacturers, jobbers, and jobbers' associations in many parts of the United States. That the evidence was submitted to the Department of Justice February 21, 1922, by the Federal Trade Commission in a special report calling attention to the violations of the law and inviting the Attorney General to inspect the detailed evidence in the possession of the Federal Trade Commission; that the Attorney General paid no attention whatever to this report and that the attention of the Attorney General was again invited to the report by the Federal Trade Commission on April 24, 1922, with a proposal for a conference as to action to secure relief for the tobacco growers and consumers of the United States. That, notwithstanding the recommendations of the Federal Trade Commission and the urgent renewal of those recommendations to the Department of Justice, said Harry M. Daugherty has done nothing whatever to prosecute the aforementioned violations of the antitrust laws.

SUBDIVISION No. 12.—ANSWER.

IN RE THE AMERICAN TOBACCO COMPANY ET AL.

The complaint in this case is that certain decree dissolving the American Tobacco Co., et al. was entered in 1911 and that the terms of that decree are now being violated by the parties thereto. This matter has been under almost continuous investigation in the field and in the department and an examination of the books of these companies has been made recently and the entire question whether the decree has in fact been violated is now being considered by both the Department of Justice and the Federal Trade Commission.

SUBDIVISION No. 13.

13. That the said Harry M. Daugherty has failed, neglected, and refused to prosecute the National Implement & Vehicle Association, the Southern Wagon Manufacturers' Association, the Carriage Builders' Association, the National Federation of Implement & Vehicle Dealers' Association, the Eastern Federation of Farm Machinery Dealers, and more than 25 other national, State, and sectional associations, each and all of which have been for many years and are now engaged in conspiracies in restraint of trade and commerce among the several States and Territories of the United States and between the States and Territories and the District of Columbia, although the Department of Justice has been for more than two years and seven months in possession of conclusive evidence that such unlawful conspiracies exist, such evidence having been gathered by the Federal Trade Commission in response to a resolution adopted by the Senate of the United States May 15, 1918, and submitted to the Senate on May 4, 1920. That as a result of the above-

mentioned conspiracies the prices of farm implements to the farmer have been increased more than 100 per cent since 1914 and that a great part of this large increase in prices was due to price understandings or agreements among manufacturers, among jobbers' associations, and among dealers. That practically all the important manufacturers of farm implements are members of the National Implement Vehicle Association, which was formed in 1911 by the merger of several then-existing associations; that this association has 13 departments covering the more important lines of farm implements; that under cover of bringing about uniform cost accounting, uniform terms of sale, members of these associations have repeatedly advanced prices of farm implements by concerted action, contrary to the laws of the United States of America. That price lists were exchanged by mail and comparison of prices was made at meetings held for the purpose of advancing prices; that dealers guilty of price cutting were blacklisted. That about 25 State and sectional associations united under two federations called the National Federation of Implements & Dealers' Association, with offices at Abilene, Kans., and the Eastern Federation of Farm Machinery Dealers, with offices at Philadelphia, Pa., have been engaged in a huge conspiracy to increase the profits of their members and to restrain trade by fostering local price agreements between dealers in the same town, by blacklisting dealers who refused to maintain prices agreed upon and by inducing manufacturers not to sell such blacklisted dealers, especially cooperative stores owned by workers and farmers. That the evidence gathered by the Federal Trade Commission and submitted to the Senate of the United States and the Department of Justice consists of a large number of letters, agreements, telegrams, contracts, minutes of meetings, price lists, and other documentary evidence showing conclusively the illegal nature of the above combination. That although the farmers of the United States have been selling their products below the cost of production for the past year and have been arbitrarily oppressed by the high prices of farm implements which have resulted from these widespread and notorious illegal conspiracies, that notwithstanding the overwhelming evidence of the existence of such conspiracies which have been in the files of the Department of Justice for more than two years, and notwithstanding that the Federal Trade Commission especially invited the attention of the Attorney General to its findings on September 8, 1921, the said Harry M. Daugherty not only has taken no action whatever to obtain relief for the farmers of the United States and to prosecute the violators of the antitrust laws, but actually has been in consultation with the representatives of many of the illegal combinations above mentioned for the purpose of enabling the parties to the numerous conspiracies to so organize and regulate their activities as to give them the color and sanction of legality, while at the same time enabling the principal objects of the conspiracy to be carried forward for the further and continuing maintenance of unjust, unreasonably high, and oppressive prices of farm implements, notwithstanding the fact that the Supreme Court of the United States has recently declared such association to constitute a violation of the laws of the United States.

## SUBDIVISION No. 13.—ANSWER.

## IN REGARD TO THE NATIONAL IMPLEMENT &amp; VEHICLE ASSOCIATION.

This subdivision contains the allegation that the National Implement & Vehicle Association and others had been considered by the Federal Trade Commission in response to a resolution adopted by the Senate on May 15, 1918, and a report pursuant to said resolution had been submitted May 4, 1920, by the Federal Trade Commission, which was called to the attention of the Attorney General on the 8th day of September, 1921. This report of the Federal Trade Commission was promptly considered by the Department of Justice, and the conclusion was then reached that since the most objectionable feature of the association's activities, as disclosed by the said report and the investigation of the department, had been eliminated and discontinued in 1918; there was no present evidence justifying any further action by the Department of Justice at that time.

## SUBDIVISION No. 14.

14. That the said Harry M. Daugherty has failed, neglected, and refused to prosecute the Macbeth-Evans Glass Co. and others, a combination existing and being maintained in restraint of trade and commerce among the several States and Territories of the United States and between the States and Territories and the District of Columbia, although the Department of Justice has been in possession for more than one year of evidence that such violations exist; such evidence has been gathered by the Federal Trade Commission and forwarded to the Department of Justice on September 9, 1921. That the evidence shows that the said Macbeth-Evans Glass Co. and others, has been and is violating the laws of the United States by entering into a combination to fix prices in restraint of trade. That notwithstanding the evidence of such violation which has been in the files of the Department of Justice so long, and said Harry M. Daugherty has not taken any action to prosecute the violators of the law or to secure the cessation of the said unlawful practices.

## SUBDIVISION No. 14.—ANSWER.

## IN RE MACBETH-EVANS GLASS CO.

This matter is under the investigation by the department in connection with the general investigation which is now being made of the glass industry in this country. This particular matter came to the attention of the Department of Justice on September 6, 1921, at which time the file from the Federal Trade Commission was transmitted to the department. The facts shown in the report all antedated January 17, 1919, by several months, and an entirely new investigation of the conditions and circumstances in connection with this company was necessary, which investigation is now being made by the Department of Justice.

## SUBDIVISION No. 15.

15. That the said Harry M. Daugherty has failed, neglected, and refused to prosecute the Mathieson Alkali Works, and others, a combi-

nation existing and being maintained in restraint of trade and commerce among the several States and Territories of the United States and between the States and Territories and the District of Columbia, although the Department of Justice has been in possession for more than three years of evidence that such violations exist; such evidence has been gathered by the Federal Trade Commission and forwarded to the Department of Justice on January 6, 1919. That the said Mathieson Alkali Works, and others, has been and is violating the laws of the United States by entering into a combination to fix prices in restraint of trade and in the interest of monopoly. That notwithstanding the evidence of such violation which has been in the files of the Department of Justice so long, the said Harry M. Daugherty has not taken any action to prosecute the violators of the law or to secure the cessation of the said unlawful practices.

SUBDIVISION No. 15.—ANSWER.

IN RE MATHIESON ALKALI WORKS.

This matter was referred by the Federal Trade Commission to the Department of Justice on the 6th day of January, 1919, and on the 20th of January of the same year it was referred to Mr. Myers, of that department, who started upon an investigation of the subject, and upon his transfer to the Solicitor General's office the investigation was conducted by Mr. Shale, of the Department of Justice. Under date of January 26, 1920, Mr. Shale recommended "that this matter be considered closed until such time as a complaint may be received which seems to warrant taking the matter up again and making a comprehensive and exhaustive investigation." This report bears the approval of Judge Ames, who was at that time the assistant to Attorney General Palmer.

SUBDIVISION No. 16.

16. That the said Harry M. Daugherty has failed, neglected, and refused to prosecute the Cumberland Glass Manufacturing Co., a combination existing and being maintained in restraint of trade and commerce among the several States and Territories of the United States and between the States and Territories and the District of Columbia, although the Department of Justice has been in possession for more than one year of evidence that such violations exist, such evidence has been gathered by the Federal Trade Commission and forwarded to the Department of Justice on September 6, 1921. That the said Cumberland Glass Manufacturing Co. has been and is violating the laws of the United States by entering into a combination to fix prices in restraint of trade. That notwithstanding the evidence of such violation which has been in the files of the Department of Justice so long the said Harry M. Daugherty has not taken any action to prosecute the violators of the law or to secure the cessation of the said unlawful practices.

SUBDIVISION No. 16.—ANSWER.

IN RE CUMBERLAND GLASS MANUFACTURING CO.

This matter is under investigation by the department in connection with the general investigation which is now being made of the glass industry in this country.



## SUBDIVISION No. 17.

17. That the said Harry M. Daugherty has failed, neglected, and refused to prosecute the National Malleable Castings Co., and others, a combination existing and being maintained in restraint of trade and commerce among the several States and Territories of the United States and between the States and Territories and the District of Columbia, although the Department of Justice has been in possession for more than three years of evidence that such violations exist, such evidence has been gathered by the Federal Trade Commission and forwarded to the Department of Justice on October 28, 1919. That the said National Malleable Castings Co., and others, has been and is violating the laws of the United States by entering into a combination of price fixing in restraint of trade. That notwithstanding the evidence of such violation which has been in the files of the Department of Justice so long the said Harry M. Daugherty has not taken any action to prosecute the violators of the law or to secure the cessation of the said unlawful practices.

## SUBDIVISION No. 17.—ANSWER.

## IN RE NATIONAL MALLEABLE CASTINGS CO.

This matter has been under investigation since April, 1922, and the investigation has just recently been completed. The entire matter is now in the hands of a special assistant in the Department of Justice, who is giving it his best attention.

## SUBDIVISION No. 18.

18. That the said Harry M. Daugherty has failed, neglected, and refused to prosecute the Maple Flooring Manufacturers' Association, a combination existing and being maintained in restraint of trade and commerce among the several States and Territories and the District of Columbia, although the Department of Justice has been in possession for more than one year of evidence that such violations exist; such evidence has been gathered by the Federal Trade Commission and forwarded to the Department of Justice on December 15, 1920. That the said Maple Flooring Manufacturers' Association has been and is violating the laws of the United States by entering into a combination to fix prices in restraint of trade. That notwithstanding the evidence of such violation which has been in the files of the Department of Justice so long, the said Harry M. Daugherty has not taken any action to prosecute the violators of the law or to secure the cessation of the said unlawful practices.

## SUBDIVISION No. 18.—ANSWER.

## IN RE MAPLE FLOORING MANUFACTURING ASSOCIATION.

This matter has been thoroughly investigated, and, while the reports and recommendations made to the department in February, 1920, were to the effect that the objectionable practices with which the association was chargeable had been eliminated, further investigation, and especially reports received within the past several weeks, clearly established a different situation, which is now being determined by the special assistants in charge of this case.

## SUBDIVISION No. 19.

19. That the said Harry M. Daugherty has failed, neglected, and refused to prosecute the California Packing Corporation, a combination existing and being maintained in restraint of trade and commerce among the several States and Territories and the District of Columbia, although the Department of Justice has been in possession for more than one year of evidence that such violations exist; such evidence has been gathered by the Federal Trade Commission and forwarded to the Department of Justice on September 7, 1921. That the said California Packing Corporation has been and is violating the laws of the United States by entering into a monopoly in restraint of competition. That notwithstanding the evidence of such violation which has been in the files of the Department of Justice so long, the said Harry M. Daugherty has not taken any action to prosecute the violators of the law or to secure the cessation of the said unlawful practices.

## SUBDIVISION No. 19.—ANSWER.

## IN RE CALIFORNIA PACKING CORPORATION.

The issues involved in this matter have been duly considered by the department by those assigned to duty in the field, as well as in the office. Under date of September 18, 1922, and after a careful and painstaking examination of the record submitted, and especially the files of the Federal Trade Commission, the conclusion was reached that no further proceedings should now be taken under the antitrust laws.

## SUBDIVISION No. 20.

20. That the said Harry M. Daugherty has failed, neglected, and refused to prosecute the Southern Wholesale Grocers' Association, and others, a combination existing and being maintained in restraint of trade and commerce among the several States and Territories and the District of Columbia, although the Department of Justice has been in possession for more than one year of evidence that such violations exist; such evidence has been gathered by the Federal Trade Commission and forwarded to the Department of Justice on September 6, 1921; that the said Southern Wholesale Grocers' Association has been and is violating the laws of the United States by entering into a conspiracy in restraint of trade; that, notwithstanding the evidence of such violation which has been in the files of the Department of Justice so long, the said Harry M. Daugherty has not taken any action to prosecute the violators of the law or to secure the cessation of the said unlawful practices.

## SUBDIVISION No. 20.—ANSWER.

## IN RE SOUTHERN WHOLESALE GROCERS' ASSOCIATION.

The Department of Justice, after receiving the report in this matter from the Federal Trade Commission, examined the same and then assigned special agents to make an investigation in the field concerning the facts of the case. After the completion of the investigation by



these special agents it was determined by the Department of Justice that there was no evidence upon which to base a prosecution against the Southern Wholesale Grocers' Association.

SUBDIVISION No. 21.

21. That the said Harry M. Daugherty has failed, neglected, and refused to prosecute Duncan's Trade Register, a combination existing and being maintained in restraint of trade and commerce among the several States and Territories and the District of Columbia, although the Department of Justice has been in possession for more than one year of evidence that such violations exist; such evidence has been gathered by the Federal Trade Commission and forwarded to the Department of Justice on September 6, 1921; that the said Duncan's Trade Register has been and is violating the laws of the United States by entering into a conspiracy with the Southern Wholesale Grocers' Association in restraint of trade; that, notwithstanding the evidence of such violation which has been in the files of the Department of Justice so long, the said Harry M. Daugherty has not taken any action to prosecute the violators of the law or to secure the cessation of the said unlawful practices.

SUBDIVISION No. 21.—ANSWER.

IN RE DUNCAN'S TRADE REGISTER.

The report in this matter was sent by the Federal Trade Commission to the Department of Justice at the same time that the report in the Southern Wholesale Grocers' Association was forwarded, and the same consideration was given this matter as was given the charge against the Southern Wholesale Grocers' Association. After completion of the work of the special agents assigned to this case, as well as the consideration thereof by the department, it was determined that there was no evidence to show that the Duncan Trade Register was violating the antitrust laws.

SUBDIVISION No. 22.

22. That the said Harry M. Daugherty has failed, neglected, and refused to prosecute the Goodman Manufacturing Co., and others, a combination existing and being maintained in restraint of trade and commerce among the several States and Territories and the District of Columbia, although the Department of Justice has been in possession for more than one year of evidence that such violations exist; such evidence has been gathered by the Federal Trade Commission and forwarded to the Department of Justice on October 29, 1921. That the said Goodman Manufacturing Co. has been and is violating the laws of the United States by entering into a combination to fix prices in restraint of trade. That, notwithstanding the evidence of such violation which has been in the files of the Department of Justice so long, the said Harry M. Daugherty has not taken any action to prosecute the violators of the law or to secure the cessation of the said unlawful practices.

## SUBDIVISION No. 22.—ANSWER.

## IN RE GOODMAN MANUFACTURING CO.

This matter has been thoroughly investigated and involves certain questions as to the rights of the holder of a patent to fix prices upon an accessory or spare part, and it will probably be necessary to litigate the question as to whether it is legal to combine the licensees under patents which merely cover improvements and agree to the price at which machinery manufactured thereunder may be sold, etc. In view of the legal importance of the questions involved in this case, and because similar, if not identical, questions have arisen in other cases, the department has not yet determined whether it will begin an action in this matter to determine the issue or whether it will await the decision of such matters in cases involving kindred questions.

## SUBDIVISION No. 23.

23. That the said Harry M. Daugherty has failed, neglected, and refused to prosecute the Pioneer Bindery & Printing Co., a combination existing and being maintained in restraint of trade and commerce among the several States and Territories and the District of Columbia, although the Department of Justice has been in possession for more than eight months of evidence that such violations exist; such evidence has been gathered by the Federal Trade Commission and forwarded to the Department of Justice on March 9, 1922. That the said Pioneer Bindery & Printing Co. has been and is violating the laws of the United States by entering into a combination to fix prices in restraint of trade. That, notwithstanding the evidence of such violation which has been in the files of the Department of Justice so long, the said Harry M. Daugherty has not taken any action to prosecute the violators of the law or to secure the cessation of the said unlawful practices.

## SUBDIVISION No. 23.—ANSWER.

## IN RE PIONEER BINDING &amp; PRINTING CO.

The report in the Pioneer Binding & Printing Co., charging a combination in restraint of trade, was forwarded to the Department of Justice by the Federal Trade Commission on March 9, 1922. The matter was given immediate attention, and it developed that the questions involved had an important bearing on the general investigation then being made by the Department of Justice of the stationery business. The Department of Justice has conducted a most exhaustive investigation of the stationery and the Pioneer Binding & Printing Co. business, and no conclusion can legally and properly be reached in the matter of the Pioneer Binding & Printing Co. until a decision is arrived at in the general stationery business of the United States. It is sufficient to say that both of these matters are being carefully considered and that they are receiving the best attention which the department can give them.

## CONCLUSION TO SPECIFICATION No. 1.

Wherefore, in view of the facts above set forth, the said Harry M. Daugherty was and is guilty of misbehavior in office, highly prejudicial to the public interest, of abuse of his discretionary power of violations of his oath of office, and of a high crime and misdemeanor in office.

## CONCLUSION TO SPECIFICATION No. 1.—ANSWER.

By way of conclusion, it is respectfully submitted that the general activities of the Department of Justice in reference to antitrust violations which have been transmitted by the Federal Trade Commission have taken their regular place in all investigations which such matters receive. No preference has been given to complaints emanating in the Federal Trade Commission over those of a similar character and importance which have been properly submitted to the Department of Justice since the 4th day of March, 1921. In every case where a charge involving the antitrust laws is made, an investigation is immediately instituted by the department to determine the merits of such complaints.

## SPECIFICATION NO. 2.

The said Harry M. Daugherty, being Attorney General of the United States, and having sworn to uphold the Constitution and to enforce the laws of the United States of America in an oath of office requiring him to "support and defend the Constitution of the United States against all enemies, foreign and domestic," and to "well and faithfully discharge the duties of the office" of Attorney General of the United States; and being particularly charged, as the chief law officer of the Government, with the duty of prosecuting those guilty of violating the Federal Statutes, has failed, neglected, and refused to prosecute violations of the antitrust laws that were called to his attention, supported by testimony taken under oath, under the following circumstances:

In October, 1920, the Legislature of the State of New York, in view of the urgency of the housing situation in that State, appointed a joint committee of the Senate and Assembly of the State of New York to investigate the subject of housing and the bearing and extent of illegal combinations in the building material trade upon the prohibitive cost of building construction. In the course of that investigation the committee exposed the existence of unlawful price-fixing and output-restricting combinations among manufacturers, dealers, wholesalers, jobbers, and others in practically every line of industry connected with building construction, involving upward of 1,000 individuals and corporations engaged in interstate commerce who were and had been for many years openly violating the Federal antitrust laws. Proof of the violations was formally placed before the Attorney General by directions of this committee upward of one and one-half years ago, and prosecutions were demanded. The Attorney General was supplied with the evidence and documents in support of these charges. In all except a few cases in which the offenders were men of small business or financial importance no action was taken on the charges, and many of them have

been permitted to be barred by the statute of limitations, notwithstanding persistent public and other protests from the committee and its counsel.

The Attorney General referred the bulk of these cases to the district attorney of New York, where most of them still lie dormant. But in the cases in which important offenders are concerned, noticeably the case against the General Electric Co., dominated by the banking house of J. P. Morgan & Co., one of whose partners is a member of the board of directors and who are the bankers for the company and select its directorate, the Attorney General refused to permit that case to be referred to the district attorney of New York, notwithstanding the request of the legislative committee above referred to and has insisted on retaining personal control of the case.

In the case of the General Electric Co. the directors are charged with having willfully and persistently violated the decree of the Federal court at Toledo, Ohio, which in 1911 adjudged the General Electric Co. as having violated the antitrust law. From the admissions of the latter at that time the General Electric Co. controlled 60 per cent of the business in electric bulbs in the United States, and at the time the charges were preferred to the Attorney General it controlled and still controls 98 per cent of that business through subsequent violations of the antitrust law and in defiance of the decree of the Toledo Federal court. The Attorney General persists in refusing to act in this case because of the potent influence of the banking house of J. P. Morgan & Co., which has been evidenced in this and other cases referred to in these charges.

Within a few days I shall furnish your committee with a complete list of the charges so submitted to the Attorney General of the United States, upon which no action has been taken. The list is not available at the moment of writing this bill of particulars.

Wherefore, in view of the facts above set forth, the said Harry M. Daugherty was and is guilty of misbehavior in office, highly prejudicial to the public interest, of abuse of his discretionary power, of violations of his oath of office, and of a high crime and misdemeanor in office.

#### **SPECIFICATION NO. 2—ANSWER.**

**IN RE UNLAWFUL PRICE FIXING AMONG MANUFACTURERS, DEALERS, WHOLESALERS, AND JOBBERS CONNECTED WITH THE BUILDING CONSTRUCTION TRADE IN THE STATE OF NEW YORK.**

A list containing about 35 or 36 names of alleged associations operating in violation of the Sherman Antitrust Act was submitted by Mr. Untermeyer to the New York branch of the Department of Justice in the fall of 1921. On the occasion of a discussion of the items of this list with Mr. Untermeyer, he requested that the list be left with him, since which time it has been impossible for the district attorney's office at New York to secure the return of the same. A number of the names mentioned were discarded because the Federal Department of Justice had no jurisdiction, inasmuch as they did not affect interstate commerce. A careful investigation of all testimony of the Lockwood committee was made by agents of the department. Of the names mentioned on the list, the following were eliminated because of the purely local character of the subject

matter and the fact that the cases presented no interstate commerce features:

Fire Insurance Exchange.  
Builders' Supply Bureau of Manhattan and the Bronx.  
Hudson River Brick Manufacturers' Association.  
Marble Industry Employers' Association.  
Concrete Fire-Proofers' Association.  
Employing Metallic, Furring, and Lathing Association of New York.  
Contractors' Protective Association.  
Stone Mason Contractors' Association.  
Composition Roofers Employers' Association.  
Association of Manufacturers of Metal Covered Doors and Windows.  
Metal Ceiling Association of New York.  
Parquet Flooring Association.  
Master Painters' Association.  
House Movers and Shorers' Association.  
Hoisting Association.  
New York Automatic Sprinkler Association.

Among the cases presented as a result of this Lockwood committee investigation indictments were found against the following:

Alexander & Reid Co. et al.  
Atlanta Terra Cotta Co. et al.  
Goodwin-Gallaher Sand & Gravel Corporation et al.  
Atlas Portland Cement Co. et al.  
Johnston Brokerage Co. et al.  
Central Foundry Co. et al.  
The American Window Glass Co. et al.  
Sanitary Potters' Association.

#### IN RE GENERAL ELECTRIC CO.

This matter has received the best possible attention of the investigational bureau of the Department of Justice. In fact, special investigators were retained for that purpose and assigned to the investigation of the methods by which this company did business. The situation resolved itself into three phases: The first was the incandescent electric lamp matter, which has been most thoroughly investigated, and the field report is now being considered as to what action, if any, should be taken thereon. The second phase is what is known as the foreign contract situation. It was not based on any complaints filed in the Department of Justice, but grew, so to speak, out of the investigation made in the electric lamp inquiry. A full report as to these investigations has been made and is now being considered by the Department of Justice, specifically as to whether the facts found warrant legal action or necessitate a further investigation. The third phase arises out of complaints received by the Department of Justice from sources other than those relating to electric lamps, which complaints involve not only the General Electric Co., but also a large number of other electrical manufacturers and jobbers, as well as various manufacturing and trade associations. This phase is now the subject of an investigation which has not yet been completed. In short, and by way of further explanation, it should be stated that the important legal question here involved is one of patent law, viz, whether the General Electric Co. has violated the antitrust laws in monopolizing patents which relate to the manufacture of electric lamps.



## SPECIFICATION NO. 3.

The said Harry M. Daugherty, being Attorney General of the United States, and having sworn to uphold the Constitution and to enforce the laws of the United States of America in an oath of office requiring him to "support and defend the Constitution of the United States against all enemies, foreign and domestic," and to "well and faithfully discharge the duties of the office" of Attorney General of the United States; and being particularly charged, as the chief law officer of the Government, with the duty of prosecuting those guilty of violating the Federal Statutes, has failed, neglected, and refused to prosecute violations of the antitrust laws that were called to his attention supported by testimony taken under oath before the United States Senate Committee on Reconstruction and Housing appointed to investigate the cause of high prices in the building industry. That as a result of hearings said Senate committee collected and transmitted to the Department of Justice evidence showing the existence of a large number of illegal combinations in restraint of trade that had been for many years openly violating the antitrust laws of the United States. That notwithstanding this evidence has been in the possession of the Attorney General for many months, he has failed and refused to take any action whatever to prosecute the violations of the antitrust laws thus disclosed or to secure a cessation of the illegal practices. That, as a result of this refusal, the people of the United States are still burdened with unreasonably high rents.

Wherefore, in view of the facts set forth, the said Harry M. Daugherty was and is guilty of misbehavior in office, highly prejudicial to the public interest, of abuse of his discretionary power, of violations of his oath of office, and of a high crime and misdemeanor in office.

## SPECIFICATION NO. 3—ANSWER.

## IN RE BUILDING INDUSTRY OF THE DISTRICT OF COLUMBIA.

The matters alleged and sought to be charged as a dereliction against the Department of Justice in this specification relate to certain proceedings before the Committee on Reconstruction and Production of the United States Senate in the Sixty-sixth Congress, second and third sessions. These proceedings were had on or about the month of July, 1920, and were completed some time during the month of February, 1921. A most thorough investigation of the records and files of the Department of Justice, including a personal examination of those having the custody of such files, fails to disclose the receipt by the Department of Justice of any such request or communication from any source whatsoever. The correspondence files of this department, however, do show that in the early part of the year 1921 Assistant Attorney General Davis requested for use in a coal investigation certain facts and evidence which were adduced and developed during the proceedings of this committee. Inquiry has also been made to discover whether any request was made, personally or by telephone, that the department should investigate further any of the matters adduced at the hearing of this committee with the result that no one in the department who would likely have received such personal or telephonic request has any recollection whatsoever of such a request being made.

## SPECIFICATION NO. 4.

That the said Harry M. Daugherty has, with intent to favor one of the parties in an industrial controversy, failed, neglected, and refused to enforce statutes of the United States passed by Congress for the protection of life and limb of citizens engaged in travel. That the principal facts in this failure, neglect, and refusal are as follows: The laws of the United States provide for inspection of railway locomotives and charge the Attorney General with the enforcement of these laws. As shown by Senate Document No. 244, Sixty-seventh Congress, second session (a report to the Senate from the Interstate Commerce Commission), the reports to the commission by its inspectors indicated "a very general let-down in the matter of inspection by the carriers which gives cause for concern." It further appears in this document that the examination of 4,085 locomotives during the month of July, 1922, disclosed defects more or less serious; that 169 were not safe to operate, and 992 of the others were found to have defects in need of prompt attention. Later records of the commission show that within a month 70 per cent of the locomotives of the railways were defective and that boiler explosions were becoming frequent. The office of the Bureau of Locomotive Inspection indicated specifically that on the Texas & Pacific up to October 30, 80 per cent of the locomotives were defective and on the Denver & Rio Grande Western over 80 per cent were defective, these two roads being in the hands of Federal receivers; and the attention of the Attorney General was specifically directed to them by the Interstate Commerce Commission, without result. On October 11, 1922, attorneys representing the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen called upon President Harding, and later, at his instance, upon the Attorney General, and placed before the said Harry M. Daugherty full and conclusive evidence of the violation of Federal statutes by many railroads in many instances; in a considerable number of which these violations had resulted in boiler explosions in which railway employees had been killed. The attention of the said Harry M. Daugherty was again called to numerous violations of the law a week or two later. That as a result of the failure, neglect, and refusal of the said Harry M. Daugherty to enforce the laws relating to railway equipment a large number of boiler explosions have occurred in New York, Pennsylvania, Louisiana, and Texas, resulting in the destruction of a large amount of property, the killing of 12 persons, and the serious and fatal injury of 25 more. That the Attorney General has knowledge of more than 100 violations of the law upon the part of railroads within the past five months, and that notwithstanding such knowledge has consistently failed and refused to enforce the safety statutes of the United States and prosecute those guilty of violating these statutes. That the excuse given for the failure to enforce the safety laws of the United States by the Department of Justice is that there was not enough money in the Public Treasury to secure proper inspection of railway equipment, but the evidence shows that at the same time this excuse was being given for failure to prosecute violations of the Federal laws by the railroads the said Harry M. Daugherty was employing, at public expense, between 4,000 and 5,000 agents in the field in an endeavor to fasten upon the laboring men—the other party to the industrial



dispute aforementioned—charges of having violated the laws of the United States.

Wherefore, in view of the facts above set forth, the said Harry M. Daugherty was and is guilty of misbehavior in office, highly prejudicial to the public interest, of abuse of his discretionary power, of violations of his oath of office, and of a high crime and misdemeanor in office.

#### **SPECIFICATION NO. 4—ANSWER.**

##### **IN RE DEFECTIVE CONDITION OF RAILROAD EQUIPMENT.**

On November 1, 1922, the matter involved in this specification was called to the attention of the Department of Justice. The situation developed in this specification is a result of and grows out of the long-continued strike on the part of the railway employees' department of the American Federation of Labor. All complaints made to the department on this subject and all of the records of the Interstate Commerce Commission have been thoroughly investigated during the past few weeks and are still under investigation, and appropriate action is now being considered and the legal remedies provided by law to meet this situation are now being considered and such action will be taken in the premises as the facts and the evidence available justify. In this connection and in this behalf your honorable committee is informed that it is the Interstate Commerce Commission and not the Department of Justice that possesses original and initial jurisdiction in such matters; and that the jurisdiction possessed by the Department of Justice arises solely from complaints based upon investigations made by the Interstate Commerce Commission and in due course submitted to the Department of Justice for such action as it deems proper to take in the premises; and, further, your committee is advised that the action of the Department of Justice in the matter of this complaint was taken solely as a result of the urgency of the situation as presented in conference to the Department of Justice by representatives of the Brotherhoods of Locomotive Engineers and Firemen; and that as a result of the request of these brotherhoods a force of investigators and attorneys belonging to the Department of Justice were sent to the bureau of locomotive inspection of the Interstate Commerce Commission with the directions to thoroughly investigate and compile every fact in any way relating to or bearing upon violations of the safety appliance and boiler inspection laws.

#### **SPECIFICATION NO. 5.**

That the said Harry M. Daugherty did dismiss from service in the Department of Justice Maj. William O. Watts upon the alleged ground that the said Major Watts had been "disloyal to the department." That the said Major Watts had been engaged for a long period as a special investigator in the Department of Justice in connection with war frauds and that, as such an investigator, he had uncovered and brought to the point of prosecution many willful, deceitful, and gigantic frauds against the Treasury of the United States. That previous to the service in the Department of Justice said Major Watts had served as executive officer in the Surplus Property Division in the War Department, where he had also uncov-

ered may willful, deceitful, and gigantic frauds against the Treasury of the United States. That previous to that time the said Major Watts had served his country with distinction in the Great War just ended and also in the Spanish-American War and in the Philippine war, and is a man of unimpeachable integrity, high honor, and fine sense of regard for the public welfare. That, previous to his dismissal from the Department of Justice, the said Major Watts, at the request of Members of the House of Representatives and the Senate of the United States, had given to the said Members of the House and Senate information about frauds practiced against the United States Government in time of war and thereafter, and that upon his dismissal the said Major Watts was verbally informed that the "disloyalty" with which he was charged consisted in his giving information to or holding conversations with Members of Congress with relation to the work upon which he was engaged. That the action above outlined proves that the said Harry M. Daugherty demands from his assistants in the Department of Justice a personal loyalty to himself, no matter how grave his misconduct in office may be, as distinguished from a loyalty to the people and to the Government of the United States in whose service the said Daugherty's assistants are engaged and from whose Treasury they are compensated.

Wherefore, in view of the facts above set forth, the said Harry M. Daugherty was and is guilty of misbehavior in office highly prejudicial to the public interest, of abuse of his discretionary power, of violations of his oath of office, and of a high crime and misdemeanor in office.

#### **SPECIFICATION NO. 5—ANSWER.**

##### **IN RE DISMISSAL OF MAJ. WILLIAM O. WATTS.**

The fact is that Major Watts was dismissed from the Department of Justice. The Attorney General does not require personal loyalty to himself, and when this subject of Major Watts's dismissal is investigated there will be submitted to your committee facts and circumstances which led the Attorney General to believe that the continued service of Major Watts with the Department of Justice was no longer required, and further informing your honorable committee in this connection and in view of the allegations sought to be charged in this specification it is submitted that the employment or the dismissal of attorneys and investigators in the Department of Justice is in no sense a matter that can give rise to impeachment proceedings.

#### **SPECIFICATION NO. 6.**

The said Harry M. Daugherty, being Attorney General of the United States, and having sworn to uphold the Constitution and to enforce the laws of the United States of America in an oath of office requiring him to "support and defend the Constitution of the United States against all enemies, foreign and domestic" and to "well and faithfully discharge the duties of the office" of Attorney General of the United States, and being particularly charged, as the chief law officer of the Government, with the duty of prosecuting those guilty of violating the Federal statutes, and particularly being responsible for the personnel and conduct of all the various United States attorneys

in the various judicial districts into which the United States has been divided, has failed and neglected to take any action whatever in charges brought against the office of United States attorney for the southern district of Illinois, situated at Chicago. That these charges made 10 months ago by Col. John V. Clinnin, assistant United States attorney, were sustained by an investigation made on behalf of the Illinois Bar Association by Edgar B. Tolman and John R. Montgomery, who made a report on October 21, 1922. That the investigation disclosed among other things that Special Assistant United States Attorney Le Bosky appears as attorney for the manager of the Great Northern Hotel, of Chicago, in a liquor case on a fee of \$1,000, the case being one of those under investigation at the time by the office of United States district attorney for the southern district of Illinois. That the said Harry M. Daugherty was duly apprised of the condition existing in the southern district of Illinois eight months ago in a report by Col. John V. Clinnin, assistant United States attorney; that he was further apprised by a special committee of the Illinois State Bar Association on October 21, 1922; that on this latter date he promised to do something the following week; that notwithstanding the conditions set forth above, the said Harry M. Daugherty has failed, neglected, and refused to take any action whatever to secure the better enforcement of Federal laws in the southern district of Illinois, to punish Federal officials guilty of misconduct in office, to oust inefficient assistants of the Department of Justice and to replace them with competent public servants.

Wherefore, in view of the facts above set forth, the said Harry M. Daugherty was and is guilty of misbehavior in office highly prejudicial to the public interest, of abuse of his discretionary power, of violations of his oath of office, and of a high crime and misdemeanor in office.

#### **SPECIFICATION NO. 6—ANSWER.**

##### **IN RE LE BOSKY.**

This specification charges that the Attorney General has failed, neglected, and refused to take steps to secure the better enforcement of Federal laws in the southern district of Illinois and to punish and remove Federal officers guilty of misconduct in that jurisdiction.

The text of this specification discloses that it refers to the northern instead of the southern district of Illinois. In February, 1922, Col. John V. Clinnin, then one of the assistant United States attorneys in that district, filed in the district court blanket charges against the office of the United States attorney and everyone in it, charging in general terms inefficiency and questionable practices but pointing out no particular instance and naming no individual.

Immediately on being advised of the filing of these charges the Attorney General called to his assistance the president of the Chicago Bar Association and the president of the Illinois Bar Association, requesting them to submit the names of six outstanding attorneys of the Chicago bar—three Democrats and three Republicans—in order that he might select from the list one Democrat and one Republican to conduct an investigation of said charges. The presidents acceded to the request of the Attorney General with the result that out of the names submitted Hon. John R. Montgomery (a Republican) and Maj. Edgar B. Tolman (a Democrat), editor-in-chief of the American

Bar Association Journal, were selected by the Attorney General to conduct this investigation.

These gentlemen proceeded at once to make an investigation and from time to time were offered such assistance as they requested, the charges being so general in nature as to require a very thorough examination of the office of the United States attorney.

In October last Messrs. Montgomery and Tolman submitted a report for the general information and guidance of the Attorney General, but the details of their investigation, which are very voluminous, have not been transmitted to the Attorney General, though he has frequently requested that they be furnished as soon as possible, and these details will undoubtedly be forwarded to the Attorney General in the near future.

This investigation disclosed, among other things, that it has been asserted that Leo S. LeBosky, while acting as special assistant United States attorney, represented the manager of the Great Northern Hotel, of Chicago, in a liquor case and received a fee of \$1,000, the case at the time being under investigation in the office of the United States attorney. In fairness to Mr. LeBosky it should be stated that he was acting as a special assistant United States attorney under an appointment from Attorney General Palmer in a mail fraud case known as *U. S. v. Marcess*. By this appointment he was under no obligation not to accept employment where there would be no conflict of interests between his client and the Government in the special case in which he had been appointed to represent the Government.

Whether the acceptance of a fee by Mr. LeBosky from the Great Northern Hotel in said liquor case was inconsistent with his duties as special assistant to the United States attorney in the mail fraud case or whether his conduct in that matter was in any other respect improper has not been definitely determined, but this matter, together with all other matters growing out of the investigation of the office of the United States attorney by Messrs Montgomery and Tolman, instead of being closed is in fact an active matter in the Department of Justice and will be disposed of in an orderly manner as soon as all of the facts are available making orderly and effective procedure possible.

#### **SPECIFICATION NO. 7.**

The said Harry M. Daugherty, being Attorney General of the United States, and having sworn to uphold the Constitution and to enforce the laws of the United States of America in an oath of office requiring him to "support and defend the Constitution of the United States against all enemies, foreign and domestic," and to "well and faithfully discharge the duties of the office" of Attorney General of the United States; and being particularly charged, as the chief law officer of the Government, with the duty of prosecuting those guilty of violating the Federal statutes, has perverted the legal processes of the United States for the purpose of instituting action for which there was no justification at the time of its presentation, and has demanded from the courts as against private individuals processes of court subversive of those rights of freedom of speech, freedom of the press, and peaceable assembly assured by the Constitution and laws of the United States. That the said Harry M. Daugherty has done these acts by making the United States an active party to a contro-



versy between the railroads and certain of their employees, and in so doing indulged in statements which he could not have helped knowing were untruthful and deceitful. That a particularization of the charge made above is contained in the following statement of facts:

On September 1, 1922, Attorney General Daugherty in person filed in the United States District Court for the Northern District of Illinois, Eastern Division, equity suit No. 2943, entitled the United States of America *v.* The Railway Employees' Department, American Federation of Labor, Bert M. Jewell, et al. The Attorney General also in person appeared in open court on the same day and asked the immediate issuance of a restraining order, which was granted and a hearing fixed for September 11. On September 11 the hearing commenced upon motion to dismiss filed on behalf of the defendants, and also upon the question of granting of the preliminary injunction, and after hearing the motion to dismiss was overruled and a preliminary injunction granted almost in the same terms as the original restraining order. In this proceeding the Attorney General violated his oath of office and acted in a manner oppressive to citizens of the United States in the following particulars, among others:

1. His bill of complaint suppressed important facts, as, for instance, it states that the differences between the railway companies and their employees arose out of Labor Board decision No. 1036, whereas, in point of fact, the differences arose long prior thereto and were based also upon two anterior decisions, No. 1036 being but one of three matters which had been voted on by the employees, and the smallest majority of the strike vote being given against this particular decision.

2. The bill of complaint ignores the fact that the officers complained against acted not on their own initiative and by their independent authority but pursuant to and carrying out the wishes of the votes of 95 per cent of all the railway employees.

3. The bill of complaint proposed to set at defiance the individual guaranties of the Constitution covering freedom of speech, freedom of press, and the right of assembly, in that it forbade persuasion, argument, sending of letters and telegrams, etc., for purposes legitimate in themselves; that is to say, in conducting a strike.

4. The bill of complaint was based upon the false statement that the decisions of the Labor Board were mandatory and had to be obeyed, which statement was contrary to the decision, as yet unreversed, on this point of Judge Page, of the northern district of Illinois, eastern division, which case had been handled by the Attorney General's office and with which the Attorney General was entirely familiar. It was also contrary to the thirteenth amendment of the Constitution forbidding involuntary servitude except for crime, protesting against which servitude, illustrated by a strike, the bill of complaint declared in effect to be illegal.

5. The bill of complaint was not filed in good faith, but was filed for purposes of oppression, as is evidenced by the following facts:

The Attorney General announced in open court at the time of applying for the original restraining order that "I will use the power of the Government of the United States within my power to prevent the labor unions of the country from destroying the open shop."



He further added:

"When the unions claim the right to dictate to the Government and dominate the American people and to deprive the American people of the necessities, then the Government will destroy the unions, for the Government of the United States is supreme and must endure.

"These statements were false and based upon premises known by the Attorney General to be false at the time, because there was no question whatever pending between the railroads and their employees relative to open or closed shop conditions, the issue relating solely to matters of wages and conditions of labor, the statement evidently being made by the Attorney General with the purpose and intent of introducing a false issue into the proceedings. Furthermore, it was no concern of the Government of the United States as a government whether an open or closed shop existed in any industry whatever in the country, and the declaration of his position made by the Attorney General of the United States was an unwarranted, unjustifiable, and oppressive taking of sides in a purely industrial controversy.

"The Attorney General must have known at the moment of the filing of the bill that a large number of the railway executives were about to come to a formal agreement with their employees covering all matters in controversy, and that the filing of this bill of complaint would make almost impossible the completion of such agreement; in fact that a literal compliance with the injunctions he sought would have prevented the two parties in difference coming to an amicable agreement.

"While a dispute between the railroads and the employees was coextensive with the continental jurisdiction of America, nevertheless injunction was endeavored to be obtained by the Attorney General which would extend not simply to the district where the bill was filed but by its terms to be operative in every part of the United States, this although there is no jurisdiction over any act outside the Federal district except that processes may run into other jurisdictions notifying parties defendant; no other form of relief being permissible outside the original jurisdiction.

"For the manifest purpose of creating prejudice against defendants, the Attorney General, while a suit was pending and being argued in court, gave out interviews and statements highly prejudicial to the defendants and not thereafter sustained by anything produced in open court, acting, therefore, in a grossly unfair, oppressive, and unlawful manner."

That at the time the said Harry M. Daugherty was investigating alleged violations of law by railway employees then on strike and with a view to legal action he had under consideration the appointment of Judge James H. Wilkerson, before whom he made the unjust, illegal, autocratic, and unconstitutional request above enumerated; and that the said Judge Wilkerson was appointed upon the recommendation of the said Harry M. Daugherty; and that immediately thereafter the said Harry M. Daugherty did apply to the said Judge James H. Wilkerson for the aforementioned unconstitutional injunction, although the said Harry M. Daugherty might have applied in any Federal jurisdiction in the United States.

Wherefore, in view of the facts above set forth, the said Harry M. Daugherty was and is guilty of misbehavior in office, highly prej-

judicial to the public interest, of abuse of his discretionary power, of violations of his oath of office, and of a high crime and misdemeanor in office.

**SPECIFICATION NO. 7—ANSWER.**

**CHICAGO INJUNCTION.**

This specification refers to the injunction proceedings started by the Attorney General in the District Court for the Northern District of the State of Illinois praying for a permanent injunction against certain striking employees and for other relief. Upon a formal showing a temporary restraining order was granted which, upon hearing on motion to dissolve by the defendants, was continued as a temporary injunction and said case is now pending with the temporary injunction in force subject to be dissolved or made permanent on final hearing of the case. The charge in this specification is that the Attorney General of the United States made application to a Federal judge recently appointed and by innuendo appointed by reason, possibly, of some influence of the Attorney General and therefore under some obligation to grant the prayer of the Attorney General in a broader and more complete way than he, the Attorney General, was entitled in law to obtain on behalf of the United States. The sole and only reason that such proceedings were instituted in the Federal Court for the Northern District of Illinois was because the headquarters of the defendants' organization was located there and they could there be served with the jurisdictional process of the court.

Second. This litigation is now pending in said court and the ultimate relief which the Attorney General will be able to obtain for the Government depends on the final decision of the court where such matter is now pending. As to the charge that by obtaining this injunctive order the Attorney General has denied to the defendants certain rights guaranteed to them by the Constitution of the United States, such charge is without merit, as the ultimate relief depends upon a decision of the court having jurisdiction of the subject matter and it does not lie within the power of the Attorney General, as the attorney for the United States, to deny to any person the rights guaranteed by the United States Constitution or to deprive such person of his personal liberty. This specification further complains of certain oral statements of the Attorney General made in connection with or at the time of this hearing. It further appears in this specification that the Attorney General stated in open court by way of argument to the court that—

I will use the power of the Government of the United States within my power to prevent the labor unions of the country from destroying the open shop.

And further:

When the unions claim the right to dictate to the Government and dominate the American people and to deprive the American people of the necessities, then the Government will destroy the unions, for the Government of the United States is supreme and must endure.

The attention of your committee is most respectfully invited to a consideration of the issues sought to be raised herein and an attempt to impeach the Attorney General of the United States by quoting to

the Judiciary Committee of the Congress of the United States the language above referred to, i. e., "The Government of the United States is supreme and must endure."

In conclusion, it is respectfully submitted that if your honorable committee should desire to hear the evidence upon which the application for the temporary restraining order here complained of was made in the case of the United States of America v. The Railway Employees' Department of the American Federation of Labor and others, and will so indicate, such facts and the law relating thereto will be submitted whenever desired.

#### SPECIFICATION NO. 8.

##### SUBDIVISION No. 1.

The said Harry M. Daugherty, being Attorney General of the United States, and having sworn to uphold the Constitution and to enforce the laws of the United States of America in an oath of office requiring him to "support and defend the Constitution of the United States against all enemies, foreign and domestic," and to "well and faithfully discharge the duties of the office" of Attorney General of the United States; and being particularly charged, as the chief law officer of the Government, with the duty of prosecuting those guilty of violating the Federal statutes, has failed, neglected, and refused to prosecute, and in the administration of justice has been guilty of consistent, bold, and flagrant favoritism in behalf of corporations, companies, and individuals owned and controlled by or affiliated with the banking house of J. Pierpont Morgan & Co., of New York, in that the said Harry M. Daugherty has repeatedly refused to initiate, or permit to be initiated, civil or criminal actions against such corporations, companies, or individuals charged with violations of the Federal statutes, although conclusive evidence of such violations has been for many months and is now in his possession, and that such prosecutions were repeatedly urged and demanded by citizens and public bodies, among others by the New York joint legislative committee on housing. That in some cases the said Harry M. Daugherty persisted in his refusal to enforce the laws of the United States against such favored corporations, companies, and individuals for so long a time that the operation of the statute of limitations permitted the beneficiaries of the Attorney General's favoritism to escape all punishment; that in other cases he directed the dismissal of indictments upon technical grounds so flimsy as to justify the presumption that the Attorney General used the power of his great office to serve the interests of indicted persons and not the interests of the people of the United States.

Among many instances of such favoritism, the following are cited as typical:

1. The said Harry M. Daugherty on November 24, 1922, did order and direct that an indictment returned in the District Court of the United States of America for the Southern District of New York, in the case of the United States of America against the United Gas Improvement Co. (a concern controlled by J. P. Morgan & Co.) and others on March 6, 1922, be dismissed by the United States attorney for the said southern district of New York. The said Harry M.

Daugherty as Attorney General of the United States, was and is in possession of evidence showing that the defendants indicted were and are guilty of violation of the laws of the United States. That the facts underlying the said indictment disclose that during the period from the year 1898 down to and including the date of the filing of this bill of particulars there has existed in the United States, and particularly in the southern district of New York, a large and important industry known as the incandescent gas lamp business, which has been and is now the subject of an unlawful conspiracy consisting in the manufacture, sale, and transportation in interstate commerce through the United States of incandescent gas lamp mantels, burners, lamps, and appliances; and in the manufacture, transportation, furnishing, and maintenance of said incandescent gas lamp mantels, burners, lamps, and appliances for cities, towns, municipalities, public institutions, corporations, merchants, and others throughout the United States. That the United Gas Improvement Co., Welsbach Co., Cities Illuminating Co. (Inc.), and Samuel E. Dodine, Randal-Morgan, Sidney Mason, George M. Landers, Arthur E. Shaw, William Findlay Brown, Eugene S. Newbold, and Charles Patterson, individuals, and other individuals not named, unlawfully did knowingly and willfully engage in a conspiracy, in undue, unreasonable, direct, and oppressive restraint of trade and commerce among the several States and Territories of the United States, and between said States and the District of Columbia, contrary to the act of Congress approved July 30, 1890, entitled, "An act to protect trade and commerce against unlawful restraint and monopolies," this conspiracy having for its main objects:

(a) The control of a large number of valuable patents relating to the industry and the exclusion of others from the use thereof; (b) the acquisition of competing companies and the exclusion of them from said company; (c) the entering into contracts with competitors, whereby said competitors would restrain competition in the industry; (d) the institution of unwarranted, tortuous, and vexatious litigation against competitors for the purpose of intimidating them and making it impossible for them to compete in said industry; (e) the entering into deceitful and collusive bids for furnishing and maintaining street lamps for the purpose of restraining competition, deceiving public officials charged with receiving competitive bids, falsely leading said officials to believe that they were obtaining bona fide competition, and to maintain monopoly and excessively high prices; (f) the secret purchase of control of competing companies for the purpose of strangling competition on the part of said companies; (g) the denial and concealing of ownerships of acquired companies for the purpose of deceiving public officials and receiving oppressive prices; (h) the circulation of misleading, false, and defamatory reports concerning competitors for the purpose of excluding said competitors from the industry; (i) the conferring among themselves and with others to fix and receive exorbitant prices for furnishing and maintaining said incandescent gas lamps; (j) the acquiring of the control of competing companies and incorporation and maintenance of such companies ostensibly as competitors, but in fact as unlawful instruments in deceiving trade and the public and accomplishing the objects of said unlawful conspiracy. That the unlawful conspiracy set forth above



was a public scandal for many years, and that after repeated efforts by competitors of the above-mentioned companies and persons to obtain relief from the Department of Justice of the United States the evidence in the aforesaid conspiracy was presented to a grand jury in the southern district of New York in February term, 1922, and an indictment returned against the companies and individuals named, charging them in three counts with violating the antitrust laws of the United States of America; that the Attorney General of the United States petitioned the District Court for the Southern District of New York, sitting in equity, for a dissolution of the unlawful monopoly above described and for other remedies provided by law; that for a period of nine months following the return of the indictment in New York, notwithstanding evidence in his possession, the said Harry M. Daugherty, Attorney General of the United States, took no action whatever to bring to trial the corporations and persons guilty of violating the antitrust laws; that on November 24, 1922, the said Harry M. Daugherty wrote a letter to Col. William A. Hayward, United States attorney for the southern district of New York, directing that the indictment against the corporations and persons named above be dismissed, notwithstanding the fact that virtually the same allegations charged in the indictment are the basis of the petition for dissolution and that the facts relied upon to obtain a dissolution of the illegal combination are the same as those previously relied upon to show the criminal guilt of the corporations and persons in the combination, and notwithstanding the fact that evidence in possession of the Department of Justice which would secure favorable action upon the petition of the Government for a dissolution would also result in the conviction of the persons and corporations; that the said Harry M. Daugherty then and there, through the action of dismissing said indictment, did fail and refuse to prosecute corporations and persons indicted for having willfully violated the antitrust laws of the United States, giving as his reason in the above-mentioned letter to Col. William Hayward "that a motion to direct a verdict for the defendants on the ground of a variance between the charges of the indictment and the case made by the proof *might* be sustained." (Italics are mine.) That in so dismissing the indictment because a technicality might possibly secure acquittal for the defendants, the said Harry M. Daugherty was in effect acting as an attorney and advocate for the indicted corporations and persons and not as an attorney and advocate for the people of the United States of America, as he was obligated to act under his oath, whereas his duty required him to make the strongest possible case for the people of the United States and not to anticipate a defense which might be raised by the indicted corporations and persons or their attorneys, which defense might or might not be sustained by a court; that by such actions the said Harry M. Daugherty did publicly announce the intention of the Department of Justice not to bring criminal actions against corporations or persons charged with violations of the antitrust laws of the United States.



## SPECIFICATION NO. 8.

## SUBDIVISION No. 1.—ANSWER.

## IN RE UNITED GAS IMPROVEMENT COMPANY.

The action taken by the Department of Justice in this matter involved both criminal and civil proceedings. After an indictment was returned in the United States Court for the Southern District of New York, it developed that proof of venue and overt acts within the statute of limitations and necessary to support a conviction was not obtainable. In fact, the complaining witness, at whose instigation and request the venue was laid in the southern district of New York, came to the Department of Justice and personally suggested that the indictment was defective and that a motion to direct a verdict for the defendants was sustainable upon such ground. The Department of Justice caused these suggestions, as well as others, to be thoroughly investigated and considered. The Department of Justice caused these investigations and considerations to be made by a gentleman learned in the law and with no previous connection with any of these matters. After a thorough investigation and after giving the matter the most impartial and conscientious consideration, the Attorney General of the United States, in the exercise of his sound judicial discretion, authorized and directed the dismissal of the indictment herein. The evidence upon which the civil proceeding was based has also been investigated, and the question whether a court of equity can enter a decree against the defendants joined and grant the relief prayed for is still under consideration and the matter is yet pending. All of the evidence in the civil and the criminal cases, as well as the report of the special assistant to the Attorney General who investigated these matters, is in the possession of the Department of Justice and will be submitted to your honorable committee at any time it may desire to consider these issues.

## SUBDIVISION No. 2.

2. That the said Harry M. Daugherty, being Attorney General of the United States, did, in April and May, 1922, permit and recommend to the Federal Court for the Southern District of New York that a dissolution decree obtained in 1914 against the New York, New Haven & Hartford Railroad (a Morgan controlled railroad) be amended so as to nullify the force and effect of the original decree. That the original decree of 1914 destroyed the interlocking directorate system by which the New York, New Haven & Hartford Railroad was able to control the Boston & Maine, the Westchester Electric, and many other competing railroads. That in April and May of 1922 the said Harry M. Daugherty proceeded to New England, where he held a series of ex parte hearings at which the officials of the New York, New Haven & Hartford Railroad presented their case against the Government and against the decree aforementioned and at which no person who opposed the position of the New York, New Haven & Hartford Railroad was permitted to be present or be heard; that as a result of these hearings the said Harry M. Daugherty recommended to the United States court that the aforementioned decree be amended in all particulars as desired by the New York, New Haven & Hartford

Railroad. That in so acting the said Harry M. Daugherty was in force and effect representing, not the people of the United States whose interests he had sworn to protect and uphold, but the New York, New Haven & Hartford Railroad, to the detriment and great disadvantage of the people of the United States in whose interest the antitrust laws were passed by Congress.

SUBDIVISION No. 2.—ANSWER.

IN RE NEW YORK, NEW HAVEN & HARTFORD RAILROAD CO.

In October, 1914, a decree was entered by consent against the New York, New Haven & Hartford Railroad Co. under the Sherman law, whereby said company was divested of the control of its principal subsidiaries, including the Boston & Maine Railroad Co. The 52 per cent of the stock of the Boston & Maine owned by the New Haven, through the Boston Holding Co. was placed in the hands of trustees who were directed to sell the stock within a short time. Market conditions being unfavorable the time was extended from year to year on application of the New Haven Co. and the trustees. A few years ago the Boston & Maine was reorganized and a number of its leased lines were acquired in exchange for its capital stock. As a result of these operations the New Haven's holdings in the Boston & Maine were reduced from 52 to 28 per cent, the New Haven becoming a minority holder. In April, 1922, the New Haven applied to the court for a modification of the decree which would direct the trustees to vote the stock held by them with a view to securing for the New Haven proportionate representation on the board of directors of the Boston & Maine. At the hearing on the application the vice president of the New Haven testified that a movement was on foot to place the Boston & Maine under the control of a rival trunk line, and that the plan, if accomplished, would further impoverish the New Haven. The Government holds the obligations of the New Haven Co., amounting to something over \$83,000,000 and obligations of the Boston & Maine in the sum of \$46,775,000, representing loans to those companies, and therefore has a vital interest in the preservation of the properties of both companies; and the Attorney General, as the law officer of the United States, was present as its representative. At the conclusion of the hearing, at which all parties in interest were heard, the court, with the consent of the Attorney General, granted a modification directing the trustees in voting for directors of the Boston & Maine (18 in all) to vote for 5 to be designated by the New Haven. At the ensuing annual meeting of the Boston & Maine the trustees carried out the letter of their instructions, but they were outvoted, and as a result none of the nominees of the New Haven was elected.

SUBDIVISION No. 3.

3. That the said Harry M. Daugherty is in possession of all the evidence necessary to a successful prosecution of the General Electric Co. and its directors for having willfully and persistently violated the decree of the Federal court entered at Toledo, Ohio, in 1911, and which decree adjudged the General Electric Co. as having violated the

antitrust laws. By direction of the joint legislative committee of the Legislature of the State of New York the said Harry M. Daugherty was supplied with all the evidence and documents in support of these charges. That the case against the General Electric Co. was one of about 20 referred by this committee to the Attorney General for prosecution, as the facts disclosed that the offense shows it is a case for Federal action. The evidence referred by this legislative committee in many cases was sent by the Attorney General Harry M. Daugherty to the Federal district attorney of New York. As evidence of the favoritism and the tender regard which the said Harry M. Daugherty has of the interests of J. P. Morgan & Co., the case against the General Electric Co. (a Morgan controlled concern) was not permitted to take the course of other cases, notwithstanding that the legislative committee referred to requested, and has frequently renewed the request, to have the case referred for action, Harry M. Daugherty has retained his personal control over the case. More than 18 months have elapsed since this case was transmitted to the said Harry M. Daugherty, and during all that time he has neglected and refused and still neglects and refuses to institute suit.

#### SUBDIVISION No. 3.—ANSWER.

##### GENERAL ELECTRIC CO.

It is positively denied that the necessary evidence is in the possession of the Attorney General for a successful prosecution of the General Electric Co. and its directors for willfully and positively violating a decree of the Federal court entered at Toledo, Ohio, in 1911. It is, however, admitted that the Lockwood committee, acting by and through its counsel, Mr. Samuel Untermyer, did submit to the Department of Justice, through the agents of said department, the evidence adduced before that committee in its investigation of the methods characterizing the business transactions of the General Electric Co. in so far as they would relate to any matters and things enjoined by the so-called Toledo decree, and that this evidence so submitted was carefully considered and examined by the agents of the Department of Justice, as well as by those charged with legally considering such questions when they reach the Department of Justice for final determination. It is further alleged, and the fact is charged to be, that these investigations and considerations so made as aforesaid, based as they were upon the evidence adduced before the Lockwood committee and submitted by its attorney, Mr. Untermyer, did not, as a matter of law, show a violation of the Toledo decree, and to that end further and other investigations have been, and are now being, made under the direction of the Attorney General of the United States. And further, by way of reply and answer to the matters sought to be charged in subdivision 3, your committee is informed that only a few weeks ago Mr. Samuel Untermyer had a telephonic conversation with a special assistant to the Attorney General having the investigation of this matter in charge, during the course of which conversation he inquired specifically why contempt proceedings based upon the Lockwood committee's report had not been instituted, and that when Mr. Untermyer was informed that the investigation deemed necessary in addition to the facts adduced by the committee had not been completed and

that it was still in the course of preparation, he replied: "Oh, pshaw; the Lockwood committee handed you evidence sufficient to justify such an action. The only thing left for me to do is to take another crack at Daugherty." In truth and in fact, the day following this conversation with the special assistant to the Attorney General of the United States there appeared in the New York Times, a daily newspaper published in the city of New York, an interview with Mr. Samuel Untermyer in which he attacked the Attorney General of the United States and the Department of Justice for not proceeding without a complete independent investigation of its own to prosecute this case upon the facts adduced in the investigation by the Lockwood committee.

#### SUBDIVISION No. 4.

4. That the said Harry M. Daugherty has neglected and refused to prosecute a number of Portland cement companies, constituting the Cement Trust, for violations of the antitrust laws. The evidence of such violations was placed in the hands of the said Harry M. Daugherty by direction of the joint committee of the Senate and Assembly of the State of New York, charged with investigating the housing situation in that State. This evidence establishes that in the cement industry the aforementioned manufacturers of cement are controlled by interlocking directorates through the banking connections of J. Pierpont Morgan & Co., were guilty of price fixing, output restricting, and with other violations of the antitrust laws; that these violations not only contributed to the unconscionable high cost of building construction, but that the corporations and firms accused and the transactions disclosed by the investigation were engaged in interstate commerce, and the offenses were such as constitute a violation of the Federal statutes. Notwithstanding the persistent public and other protests of the committee of the New York Legislature and its counsel, the said Harry M. Daugherty has refused and still refuses to institute any proceedings to punish the individuals and corporations guilty of these violations.

Wherefore, in view of the facts above set forth, namely, that the said Harry M. Daugherty has refused and still refuses and neglects to bring court action in cases involving companies, concerns, and individuals associated with the powerful banking house of J. Pierpont Morgan & Co., or controlled through it, accused of violation of the Federal statutes, the said Harry M. Daugherty was and is guilty of misbehavior in office, highly prejudicial to the public interest, of abuse of his discretionary power, of violations of his oath of office, and of a high crime and misdemeanor.

#### SUBDIVISION No. 4.—ANSWER.

##### IN RE PORTLAND CEMENT CO.

This subdivision of the specification charges the Attorney General with failure to prosecute certain members of the Cement Trust after information concerning the same had been turned over to him as the result of the investigation by the Lockwood committee of the New York State Legislature. The cement situation in the United States and the alleged combinations in restraint of trade and



maintenance except that while engaged in the general practice of the law and long prior to his connection with the Department of Justice he did in the years 1916 and 1917 represent the Morse Steamship Co. in certain litigation it had in England with the British Admiralty, and in not more than three cases in the American courts.

The said Harry M. Daugherty, being Attorney General of the United States, and having sworn to uphold the Constitution and to enforce the laws of the United States of America in an oath of office requiring him to "support and defend the Constitution of the United States against all enemies, foreign and domestic," and to "well and faithfully discharge the duties of the office" of Attorney General of the United States, and being particularly charged with the proper and honest expenditure of the funds appropriated for the conduct of his department, by the Congress of the United States has illegally and willfully diverted public funds from their proper purposes by ordering agents of the Department of Justice to shadow Congressman Royal C. Johnson, of South Dakota, and Congressman Roy O. Woodruff, of Michigan, and Senator Thaddeus H. Caraway, of Arkansas, after these Members of Congress had made charges against the Attorney General on the floor of both Houses. That he ordered agents in the pay of the Department of Justice to open mail going from and to the offices of Members of Congress and ordered other representatives of the Department of Justice to go into the field to make an investigation of the personal lives of the Members of Congress who had dared to criticize him for misconduct in office. That one of the highest paid agents in the Bureau of Investigation of the Department of Justice has, in fact, been employed as a personal valet and chauffeur of the family of the Attorney General.

(B) DIVERSION OF FUNDS—SHADOWING MEMBERS OF CONGRESS.

In the foregoing specification so named it is sought to charge that the Attorney General diverted public funds by ordering that agents of the Department of Justice "shadow Congressman Royal C. Johnson, of South Dakota; Congressman Roy O. Woodruff, of Michigan; and Senator Thaddeus H. Caraway, of Arkansas, after these Members of Congress had made charges against the Attorney General on the floor of both Houses." It is further in this specification alleged that agents of the Department of Justice opened mail going from and to the offices of Members of Congress and generally made an investigation "of the personal lives of the Members of Congress who had dared to criticize him (the Attorney General) for misconduct in office." In answer to these statements and allegations just mentioned the Attorney General specifically denies each and every matter, fact, and thing therein charged and attempted to be charged. Some months ago there appeared in public print a charge that Members of Congress were being shadowed and that their mail was being opened by agents of the Department of Justice. The Attorney General immediately issued personal instructions that under no circumstances should either of such things be done by any agent of the department. At the same time he made an investigation of the charge contained in such publication and reached the conclusion that there was no foundation for it. He further informs your honorable committee that each and every of the statements so made are without the



Wherefore, in view of the facts above set forth, the said Harry M. Daugherty was and is guilty of misbehavior in office, highly prejudicial to the public interest, of abuse of his discretionary power, of violation of his oath of office, and of a high crime and misdemeanor.

**SPECIFICATION NO. 9.—ANSWER.**

IN RE (A) VIRGINIA SHIPBUILDING CORPORATION.

In specification 9, subdivision (a), it is sought to charge that the Attorney General of the United States obtained the indictment of one Morse and his son charged with having violated the Federal statutes, and with having obtained the indictment of three attorneys "said to have advised the company in connection with the alleged illegal acts; but failed, neglected, and refused to seek the indictment of other directors of the company equally guilty, and with having failed to seek the indictment of the principal attorney of the company, equally guilty with the attorneys indicted, the said principal attorney being the holder of a position of great responsibility and trust in the office of the Attorney General. In this connection, and in reply to the alleged charges just hereinbefore quoted, the Attorney General begs leave to inform your honorable committee, that the connection of the Department of Justice with the so-called Morse indictments was solely formal and in proof thereof alleges and states to your committee as follows: That the facts and circumstances justifying the return of the indictment in question arose out of certain transactions which Mr. Morse and his codefendants had with the United States Shipping Board subsequent to the entry of the United States into the great war; that the United States Shipping Board had and maintained its own legal department and as such investigated the facts giving rise to such indictment; that while it is true that certain of the attorneys representing the United States Shipping Board bore the title of Special Assistant to the Attorney General without pay they were at no time subject to the direction and control of the Department of Justice and in fact were never directed or controlled by the Department of Justice, but were subject solely to the direction and the control of the United States Shipping Board and those charged with the administration of its legal affairs. The Attorney General did not direct that any person, a director or otherwise, should or should not be indicted, but left that matter to the officials in charge of the investigation.

As to the charge that the Attorney General failed to seek the indictment of the "principal attorney, being the holder of a position of great responsibility and trust in the office of the Attorney General," the charge is as false in fact as it is knowingly untrue to those responsible for the allegation in question. Since those responsible for making this statement have not the courage to mention by name the individual so sought to be libeled and defamed, the entire matter might be passed over as being immaterial and irrelevant to any issue here involved of a legal and relevant nature. The fact is that the gentleman so indirectly and cowardly defamed was never at any time connected with the Virginia Shipbuilding Corporation or with any of the Morse companies, either as a director, a stockholder, or as an attorney prior to and during their creation, organization, and

maintenance except that while engaged in the general practice of the law and long prior to his connection with the Department of Justice he did in the years 1916 and 1917 represent the Morse Steamship Co. in certain litigation it had in England with the British Admiralty, and in not more than three cases in the American courts.

The said Harry M. Daugherty, being Attorney General of the United States, and having sworn to uphold the Constitution and to enforce the laws of the United States of America in an oath of office requiring him to "support and defend the Constitution of the United States against all enemies, foreign and domestic," and to "well and faithfully discharge the duties of the office" of Attorney General of the United States, and being particularly charged with the proper and honest expenditure of the funds appropriated for the conduct of his department, by the Congress of the United States has illegally and willfully diverted public funds from their proper purposes by ordering agents of the Department of Justice to shadow Congressman Royal C. Johnson, of South Dakota, and Congressman Roy O. Woodruff, of Michigan, and Senator Thaddeus H. Caraway, of Arkansas, after these Members of Congress had made charges against the Attorney General on the floor of both Houses. That he ordered agents in the pay of the Department of Justice to open mail going from and to the offices of Members of Congress and ordered other representatives of the Department of Justice to go into the field to make an investigation of the personal lives of the Members of Congress who had dared to criticize him for misconduct in office. That one of the highest paid agents in the Bureau of Investigation of the Department of Justice has, in fact, been employed as a personal valet and chauffeur of the family of the Attorney General.

(B) DIVERSION OF FUNDS—SHADOWING MEMBERS OF CONGRESS.

In the foregoing specification so named it is sought to charge that the Attorney General diverted public funds by ordering that agents of the Department of Justice "shadow Congressman Royal C. Johnson, of South Dakota; Congressman Roy O. Woodruff, of Michigan; and Senator Thaddeus H. Caraway, of Arkansas, after these Members of Congress had made charges against the Attorney General on the floor of both Houses." It is further in this specification alleged that agents of the Department of Justice opened mail going from and to the offices of Members of Congress and generally made an investigation "of the personal lives of the Members of Congress who had dared to criticize him (the Attorney General) for misconduct in office." In answer to these statements and allegations just mentioned the Attorney General specifically denies each and every matter, fact, and thing therein charged and attempted to be charged. Some months ago there appeared in public print a charge that Members of Congress were being shadowed and that their mail was being opened by agents of the Department of Justice. The Attorney General immediately issued personal instructions that under no circumstances should either of such things be done by any agent of the department. At the same time he made an investigation of the charge contained in such publication and reached the conclusion that there was no foundation for it. He further informs your honorable committee that each and every of the statements so made are without the

slightest foundation in fact and are irrelevant and immaterial to any legal issue properly raisable in this matter. It has never been the practice of the Department of Justice to concern itself with the mail, the personal conduct, the personal habits, the personal idiosyncrasies, or the private life of any Member of the House of Representatives or the Senate of the United States nor would such practice be countenanced unless some member of either of those bodies was charged with the violation of the laws of his country and in the event that he was so charged, then without hesitation and obviously without the diversion of any public funds he would be so investigated as the facts might require.

As to the charge that an agent in the Bureau of Investigation has been employed as a personal valet and chauffeur in the family of the Attorney General, the fact is that prior to his employment in the Bureau of Investigation the agent so charged had many years before been employed as a chauffeur in the family of the Attorney General in the city of Columbus, Ohio, but at no time since his connection with the Bureau of Investigation has he been employed as a personal valet in the Attorney General's family, and in truth and in fact he has not at any time since his connection with the Department of Justice performed for or discharged in any sense duties of a personal and private character for the Attorney General of the United States except on a very few emergency occasions he has driven the car of the Attorney General without any interference with his regular official duties.

#### **SPECIFICATION NO. 10.**

That the said Daugherty has illegally diverted from their proper use funds appropriated by the Congress of the United States by the employment of a large number of agents in the Bureau of Investigation of the Department of Justice to secure evidence against and aid in the prosecution of defendants charged, under the laws of the State of Michigan, with offenses against the laws of the State of Michigan and not against the statutes of the United States of America; that the particulars of the specifications are as follows:

Last August a number of persons were arrested by agents of the Bureau of Investigation of the Department of Justice in a raid on a Communist convention at Bridgman, Mich. These persons were not charged with the violation of any Federal statute, but were charged with violation of the Michigan law against criminal syndicalism. Notwithstanding this, the entire investigation which led to their arrest and the assistance now being given to the Michigan authorities in the prosecution of these cases is being rendered by agents in the employ of the Department of Justice.

That the interference of the said Daugherty with the legal processes of the State of Michigan is not only willful and illegal diversion of funds from their proper uses but an unwarranted, autocratic, and unconstitutional invasion of the sovereignty of the State of Michigan by the said Daugherty in his capacity as Attorney General of the United States.

Wherefore, in view of the facts above set forth, the said Harry M. Daugherty was and is guilty of misbehavior in office, highly prejudicial to the public interest, of abuse of his discretionary power, of violations of his oath of office, and of a high crime and misdemeanor in office.

**SPECIFICATION NO. 10.—ANSWER.**

This specification charges the illegal diversion of funds of the Federal Government in the prosecution of certain offenses against the laws of the State of Michigan. The facts in this case are that early in August, 1922, information was received that the national convention of the Communist Party of America would be held at Bridgman, in the State of Michigan, for the purpose of deciding upon the program for the initiation of propaganda for the dissemination of Communist doctrines within the Army and Navy of the United States, and that three official representatives from Russia were en route with instructions from the Third Internationale, which is the international directing agency subsidized by the soviets for their propaganda. Membership in or affiliation with the Third Internationale, the Russian Communist Party, or official status in the Russian Soviet Republic on the part of an alien in the United States is a sufficient basis for deportation. The same law applies to an alien who is a member of the Communist Party of America, on the ground that all these institutions advocate and teach the forcible overthrow of the Government of the United States. Upon the receipt of this information the Department of Justice took steps to place under surveillance the activities of this body of men. It was definitely ascertained that two representatives from the Soviet Government of Russia were present at Bridgman on this occasion, one of whom was wanted by the Federal authorities in a criminal case for forgery and the misuse of an American passport, and as against the other proceedings had been instituted in Buffalo to denaturalize him because of his repatriation to Russia, where he had taken a prominent part in the activities of the Third Internationale and the Soviet Government. The meeting was held at Bridgman, in the State of Michigan, and the officers of the law of that State had the matter fully under surveillance and control. It was not necessary for the agents of the Department of Justice to proceed any further than herein indicated, and they in fact acted merely as observers and did not participate in making the arrests on that occasion, and have not been called upon by the authorities of the State of Michigan in any way to discharge the functions ordinarily pertaining to police duty under the laws of that State. The authorities of Michigan, however, are asking the Department of Justice to furnish certain testimony in the prosecution of some of the persons there apprehended, for which, of course, the expenses will be paid by the State of Michigan. These facts cover the allegations made as to the expenditure of moneys alleged, and in so far as moneys have been expended in this connection the Attorney General of the United States justifies the same in law as expended for a Federal purpose.

**SPECIFICATION NO. 11.****SUBDIVISION No. 1.**

The said Harry M. Daugherty, being Attorney General of the United States, and having sworn to uphold the Constitution and to enforce the laws of the United States of America in an oath of office requiring him to "support and defend the Constitution of the United States against all enemies, foreign and domestic," and to "well and



faithfully discharge the duties of the office" of Attorney General of the United States; and being particularly charged, as the chief law officer of the Government, with the duty of prosecuting those guilty of violating the Federal statutes, such violators of the Federal statutes, in the cases of the clients of one Thomas B. Felder, of New York, who exercises over the said Harry M. Daugherty a mysterious and potential influence. The said Felder was at one time an associate of the said Harry M. Daugherty, as more particularly set forth in Specification No. 9. The record of the offices of the United States district attorneys and of the Prohibition Enforcement Bureau in the districts of New York, Philadelphia, and elsewhere, the records of the said Felder and of the office of the Attorney General show that the recommendations of said Felder in criminal cases are more potent with the said Harry M. Daugherty than are those of the duly constituted Government prosecutors. The said Felder is particularly efficient in the cases of bootleggers and has been peculiarly successful in having said Harry M. Daugherty overturn and override the Government attorneys to the advantage of the clients of the said Felder. Through his susceptibility to this mysterious influence the said Harry M. Daugherty has prostituted his office and has interfered with and blocked the administration of justice. The following instances, among many, are typical of the exercises of power by the said Felder:

1. The district attorney's office in New York recommended criminal prosecution of the crew arrested and a confiscation of the ship *J. B. Young*, seized for alleged violation of the Volstead Act. Notwithstanding that the district attorney of New York and the prohibition officers handling the case were confident that the facts were such as to insure conviction, the ship and its crew were ordered released through direct orders of the said Harry M. Daugherty after the said Felder had been retained as attorney to represent the owners of the vessel.

#### **SPECIFICATION NO. 11.**

##### **SUBDIVISION No. 1.—ANSWER.**

##### **IN RE BRITISH SCHOONER "J. B. YOUNG."**

From the records of this department it appears that the British schooner, bound from St. Pierre Miquelon to the Bahama Islands, did, on October 19, 1921, 25 miles off the shores of the United States, unload a portion of her cargo to the American ship *John Gully*, which ship was later seized in the harbor of New York. Thereafter, on October 28, the master of the *J. B. Young* abandoned the ship, taking with him money and valuables belonging to the owner thereof. No one on the ship being able to pilot her, distress signal was hoisted, and on November 1, 1921, she was picked up by a harbor pilot and taken into the harbor of New York. At that time she had 300 cases of liquor on board, was entirely out of provisions and water, and had no one able to pilot her. The United States attorney for the southern district of New York recommended to the Department of Justice on December 2, 1921, that "although suspicion runs against the ship, I am hesitant about making a recommendation in regard to this ship. The peculiar circumstances of her coming into this port in distress makes it not improbable that the court might rule against



the applicability of section 26, Title II, of the prohibition act in a decision which might be very damaging in future cases of far greater clarity." Thereafter, on December 14, 1921, the Secretary of State recommended to the Department of Justice that he was "of the opinion that since this vessel was not destined to an American port, but came into New York harbor in distress, it would be undesirable to institute proceedings for its forfeiture." Therefore, since there was no evidence placed at the disposal of the Department of Justice of the violation of either the national prohibition act within the 3-mile limit of our shores or of the hovering statutes within the 4-league limit of our shores, and upon the recommendation of the United States attorney for the southern district of New York and the Secretary of State, the ship was released upon the owners giving bond for the safe delivery of the balance of the cargo to the point of destination named in its clearance papers, to wit, the Bahama Islands. This department was later advised by the United States consul that the balance of the cargo which had been released was safely delivered at the point of destination. And by way of conclusion, the Attorney General submits that the connection of Mr. Thomas B. Felder as attorney for the owner of the ship and its cargo in no way influenced the decision of the Department of Justice to release this ship under the circumstances just detailed.

#### SUBDIVISION No. 2.

2. The prohibition officers seized \$200,000 worth of wine at the store of the Continental Wine Co., of Philadelphia, and as a result of the seizure one Nathan Musher was indicted for conspiracy to violate the Volstead Act. After Mr. Felder had been retained, the said Harry M. Daugherty caused the \$200,000 worth of wine to be released.

#### SUBDIVISION No. 2.—ANSWER.

IN RE \$200,000 WORTH OF WINE OF THE CONTINENTAL WINE CO. OF PHILADELPHIA.

There is no information obtainable by the Department of Justice or within its knowledge relating to any matter or fact connected with or going to make up the charges sought to be alleged in the specification in which it is charged that one Nathan Musher, represented by Thomas B. Felder, succeeded in having returned to him \$200,000 worth of wine seized in the city of Philadelphia, and further for the information of this honorable committee the Attorney General begs leave to state that he has caused inquiry to be made of the offices of the Department of Justice in the cities of Philadelphia, Pa.; New York City, N. Y.; Baltimore, Md.; and the District of Columbia, to ascertain whether any matter in any way tending to substantiate these alleged charges was a matter of record in either of these offices, and that he was informed by the United States attorneys in the said several cities here mentioned that no such matter had ever come to their attention and that to their knowledge no such case had ever been a matter of record in their offices and that the said Thomas B. Felder had not appeared in any such matter as the return of an indictment or the release of any wine belonging to Nathan Musher or anyone by any other name.

## CHARGES AGAINST THE ATTORNEY GENERAL.

### SUBDIVISION No. 3.

3. Director Harold H. Hart, Thomas Reedy, Michael Lynch, employed in the Federal prohibition office in New York, were indicted in November, 1921, for conspiracy to violate the Volstead Act. They had, it is alleged, illegally released 2,000,000 gallons of liquor. When they were arraigned in court the said Felder appeared for them. Since the time after arraignment nothing has been heard of the case and the criminal prosecution has come to a stop.

Wherefore, in view of the facts above recited, the said Harry M. Daugherty has been and is guilty of misconduct in office highly prejudicial to the public interest, of abuse of his discretionary power and the violation of his oath of office, and of a high crime and misdemeanor.

### SUBDIVISION No. 3.—ANSWER.

On January 4, 1922, an indictment was returned in the southern district of New York against Harold H. Hart, Thomas Reedy, and Michael Lynch, employed in the Federal prohibition office, in New York, for conspiracy to violate the Volstead Act. Since that time the Federal courts of the southern district of New York have been so congested that it has been impossible to secure a place on the trial calendar for a case that will consume as much time as one of this character. The time of the courts for the past two terms of court have been largely consumed in trying cases of people who are confined in jail. The proceedings in this case have not been stopped. The case will be brought to trial at the earliest date that can be secured. While the Department of Justice has no knowledge whether Mr. Thomas B. Felder appears for the defendants, it is only proper to state that the Attorney General has given no directions whatever as to the trial of this case and has not directly or indirectly interfered with the setting this case down for trial, and further, and by way of conclusion, the Attorney General respectfully submits that while he has no control over the defendants who may be indicted in a criminal action and has no part in their choosing their counsel, he does not think that the fact that men under indictment in this or any other case see fit to retain Mr. Felder or anyone else that it constitutes an offense giving rise to impeachment.

### SPECIFICATION NO. 12.

#### SUBDIVISION No. 1.

The said Harry M. Daugherty, being Attorney General of the United States, and having sworn to uphold the Constitution and to enforce the laws of the United States of America in an oath of office requiring him to "support and defend the Constitution of the United States against all enemies, foreign and domestic," and to "well and faithfully discharge the duties of the office" of Attorney General of the United States; and being particularly charged, as the chief law officer of the Government, with the duty of prosecuting those guilty of violating the Federal statutes, has failed, neglected, and refused to prosecute such violators of the Federal statutes in the cases of corporations and individuals possessed of great wealth and who are i

position to exert and do exert so potent an influence over him and in his department that he has deliberately connived at the looting of one of the naval oil reserves by refusing, at the behest and on the demands of the Standard Oil Co. of California, to institute suits to recover for the people of the United States title to lands illegally and fraudulently obtained by the said company; that in other cases so powerful was the influence of persons of great wealth that he recommended to the President and secured the secret pardon of wealthy persons immediately after their conviction for violation of the antitrust laws and for shocking crimes against childhood innocence, and involving the greatest moral turpitude. Among many instances, the following are cited as typical:

1. On March 3, 1921, there was received at the Department of Justice from the Secretary of the Interior a voluminous report upon the holding by the Standard Oil Co. of California of lands in sections 16 and 36 in the Elk Hills district, Calif., being part of the naval oil reserve. This report carried a strong recommendation of the Secretary of the Navy and the Secretary of the Interior to the Attorney General asking that suit be instituted to oust the Standard Oil Co. of California from said lands and to recover same for the United States so that the oil therein be had for the Navy. This report, fortified by the opinion of the law officers of the Department of the Interior and other legal investigators, held that the Standard Oil Co. of California was holding the lands through a claim of title based upon a transfer from the State of California, when, as a matter of fact and law, said State never had title to these lands and was without power to issue a valid deed to same. The report recited that some time prior to 1915 the State of California, recognizing that these lands had long been known to be mineral in character, it could not under its school grant lay valid claim to same and had filed a petition to be allotted other lands in lieu of these sections. That while this petition was unacted upon, the Standard Oil Co. of California, through an illegal sale, secured the color of title and interest upon said lands. That this action constituted a fraud upon the United States and that the Government had a clear case which upon presentation to the court would result in the ouster of the Standard Oil Co. of California from its illegal possession of the property, the recovery of a large area of rich oil lands to the Naval Reserve, and of the value of the oil illegally taken from the land by the Standard Oil Co. of California.

The said case was referred to Leslie G. Garnett, Assistant Attorney General. He repeatedly attempted to talk with Harry M. Daugherty, Attorney General, upon the case, but said that Harry M. Daugherty neglected, refused, and did not discuss the case with him. Finally, Mr. Garnett, despairing of securing a personal interview, sent a memorandum to the Attorney General advising that action such as recommended by the Interior and Navy Departments should be instituted immediately.

Within three or four days after this memorandum was delivered to Attorney General Harry M. Daugherty one Mr. Loomis, vice president of the Standard Oil Co. of California, appeared at the office of Assistant Attorney General Garnett and inquired the status of the case against his company. Mr. Garnett advised him that he had transmitted to the Attorney General the memorandum heretofore referred to. About <sup>later</sup> said Loomis appeared again at

the office of Mr. Garnett and delivered to the Assistant Attorney General a letter on the stationery and in the handwriting of the Attorney General. This letter was a direction to Mr. Garnett not to take any action in the case against the Standard Oil Co. of California without talking the matter over with the Attorney General. This letter was signed by Harry M. Daugherty and constituted an interference that worked to stop any action upon this case.

That later, about May 11, Mr. Garnett was relieved from further service in the Department of Justice and within a day or two later, on or about May 12, the Secretary of the Interior requested the Attorney General to return to the Department of the Interior all the papers in this case. That the said Harry M. Daugherty willingly and immediately complied with this request. Upon return of the papers to the Department of the Interior, Secretary Fall held an ex parte hearing at which one Sutro, a representative of the Standard Oil Co. of California, was the only person heard, and upon this hearing the Secretary of the Interior made a ruling quashing all proceedings in this case.

That Harry M. Daugherty, by his failure and refusal to direct suit to be brought in this case and by surrendering possession of the papers of themselves sufficient to establish the case of the Government, was directly responsible for the loss of these valuable oil lands to the Government. That the orders issued personally by Daugherty were delivered through and by the hands of a lobbyist of the Standard Oil Co. of California, is an outrageous and shocking evidence of the absence of all sense of decency and regard of the public interest.

#### SUBDIVISION No. 1.—ANSWER.

With respect to the charge in Specification No. 12 that the Attorney General fraudulently failed to take steps for the recovery from the Standard Oil Co. of certain oil lands in California, the facts, briefly stated, are these: The lands in controversy, sections 16 and 36, of a designated township and range, in the Elk Hills, Calif., were first officially surveyed in 1901 and the plat of survey approved in 1902. Under the act of Congress of March 3, 1853, sections 16 and 36 in each township were granted to California for school purposes. The grant, which took effect the moment the lands were surveyed, did not embrace lands which at that time were known mineral lands. The Standard Oil Co. claimed under a title derived from California. In January, 1914, the Commissioner of the General Land Office directed the register and receiver at Visalia, Calif., to institute an inquiry to determine the known character of the lands when the grant took effect, but no action was ever taken. On February 11, 1921, a special assistant to the Attorney General brought this fact to the attention of the Attorney General, stating that the Standard Oil had already drilled 19 wells on section 36, but none on section 16. He added that the land had always been supposed by his office, and so far as he knew by the Interior Department, to be a school section to which the Standard Oil had acquired a good title; but he called attention to a report made by a special agent disclosing certain facts which indicated that the lands were known mineral lands at the date of survey. On February 28, 1921, the Secretary of the Navy requested



antitrust laws. By direction of the joint legislative committee of the Legislature of the State of New York the said Harry M. Daugherty was supplied with all the evidence and documents in support of these charges. That the case against the General Electric Co. was one of about 20 referred by this committee to the Attorney General for prosecution, as the facts disclosed that the offense shows it is a case for Federal action. The evidence referred by this legislative committee in many cases was sent by the Attorney General Harry M. Daugherty to the Federal district attorney of New York. As evidence of the favoritism and the tender regard which the said Harry M. Daugherty has of the interests of J. P. Morgan & Co., the case against the General Electric Co. (a Morgan controlled concern) was not permitted to take the course of other cases, notwithstanding that the legislative committee referred to requested, and has frequently renewed the request, to have the case referred for action, Harry M. Daugherty has retained his personal control over the case. More than 18 months have elapsed since this case was transmitted to the said Harry M. Daugherty, and during all that time he has neglected and refused and still neglects and refuses to institute suit.

#### SUBDIVISION No. 3.—ANSWER.

##### GENERAL ELECTRIC CO.

It is positively denied that the necessary evidence is in the possession of the Attorney General for a successful prosecution of the General Electric Co. and its directors for willfully and positively violating a decree of the Federal court entered at Toledo, Ohio, in 1911. It is, however, admitted that the Lockwood committee, acting by and through its counsel, Mr. Samuel Untermyer, did submit to the Department of Justice, through the agents of said department, the evidence adduced before that committee in its investigation of the methods characterizing the business transactions of the General Electric Co. in so far as they would relate to any matters and things enjoined by the so-called Toledo decree, and that this evidence so submitted was carefully considered and examined by the agents of the Department of Justice, as well as by those charged with legally considering such questions when they reach the Department of Justice for final determination. It is further alleged, and the fact is charged to be, that these investigations and considerations so made as aforesaid, based as they were upon the evidence adduced before the Lockwood committee and submitted by its attorney, Mr. Untermyer, did not, as a matter of law, show a violation of the Toledo decree, and to that end further and other investigations have been, and are now being, made under the direction of the Attorney General of the United States. And further, by way of reply and answer to the matters sought to be charged in subdivision 3, your committee is informed that only a few weeks ago Mr. Samuel Untermyer had a telephonic conversation with a special assistant to the Attorney General having the investigation of this matter in charge, during the course of which conversation he inquired specifically why contempt proceedings based upon the Lockwood committee's report had not been instituted, and that when Mr. Untermyer was informed that the investigation deemed necessary in addition to the facts adduced by the Lockwood committee had not been completed and



be served by keeping Meyers in jail. The said Harry M. Daugherty, abusing the discretion with which he is clothed by the law, and notwithstanding the attitude of the judicial officers familiar with all the facts and circumstances of the case, recommended the pardon, and prevailed upon the President to grant a pardon to this man. This pardon was granted, and knowledge of same was kept from the public for some time.

#### SUBDIVISION No. 2.—ANSWER.

##### IN RE PARDON OF GEORGE MEYERS.

Mr. Meyers was not pardoned. The conviction in this case grew out of a violation of the so-called white slave act. The defendant was convicted on the most technical of charges. The woman resided in Pittsburgh, Pa. It is true that a meretricious relation had existed between her and Mr. Meyers and, in consideration thereof, he had granted her an annuity for the support of herself and her child. This arrangement was known to her family and by the wife and daughter of defendant Meyers. Later he placed in bank a lump sum, the income from which was to go to the mother for the maintenance and education of the child until 21 years of age, at which time he was to receive the entire principal. The mother of the woman died and she went to visit relatives who lived in Ohio. After living there for some time she decided to remain in Ohio permanently and make that her home and with this intention went to Pittsburgh and moved her furniture to the State of Ohio. Meyers did not accompany her on that trip.

It was charged that the freight charges amounted to about \$25, which Mr. Meyers defrayed. Out of this charge the indictment grew, and it was not returned until within three days of the running of the statute of limitations. It was upon this most technical charge that the indictment and conviction which followed were obtained. The evidence, on the application for executive clemency, disclosed that it was not the desire of the woman that Meyers be imprisoned, and that his wife and family had not only forgiven him, but were anxious to have him return to his home. As stated, neither the Attorney General nor the President considered that a pardon was applicable to the facts. The sentence was commuted to a period of three years, and under this commutation the defendant Meyers, becoming eligible for parole, was recommended for parole by the parole board and was paroled. He had served more than the equivalent of a sentence of 18 months when the sentence was commuted.

#### SUBDIVISION No. 3.

3. That one Nobbie, a wealthy terra-cotta manufacturer of New Jersey, was convicted and sentenced to Atlanta for criminal violation of the antitrust laws. The prosecution of this case was permitted by the Attorney General only after the exercise of pressure by a public outraged by the disclosures of the exactions of his trust. Immediately that he was sentenced this Nobbie set the machinery in motion for his pardon, with the result that through the recommendation of Harry M. Daugherty he was secretly pardoned after having served less than one week in prison; the alleged grounds of the pardon

commerce and monopolies have been fully investigated by the Department of Justice, and as a result thereof various civil suits, as well as criminal prosecutions, have been filed in various jurisdictions in the United States courts, and the same are now pending and being urged for trial by the Department of Justice. One of the criminal cases pending in the Southern District of New York has been tried, with the result of a disagreement of the jury, and another trial will be had as soon as possible.

In this and several preceding specifications and subdivisions thereunder, it is charged and asserted, in substance and effect, that the Department of Justice and the Attorney General of the United States have neglected and refused to prosecute violators of the anti-trust laws, because such violators are controlled by interlocking directorates through the banking connections of J. Pierpont Morgan & Co. The suggestion and insinuation is sought to be conveyed that such violators gain immunity through their financial connections. These insinuations are as unwarranted as they are unworthy and untrue. The statement that evidence showing violation of the anti-trust laws by the Portland Cement Co. has been placed in the possession of the Department of Justice is likewise untrue. Neither the Department of Justice nor the Attorney General is controlled or affected by the power of wealth or the appeals of poverty when it comes to the enforcement of the law of the land. Neither the Department of Justice nor the Attorney General is intimidated by the power of wealth or the insinuating threats of those who can not control the Department of Justice. Neither the Department of Justice nor the Attorney General is affected by the threats of commercial organizations or the prejudiced and untruthful charges of those who try to control by innuendo and insinuation the enforcement of the Federal laws when the facts involved fail to show that these laws have been violated.

#### **SPECIFICATION NO. 9.**

The said Harry M. Daugherty, being Attorney General of the United States, and having sworn to uphold the Constitution and to enforce the laws of the United States of America in an oath of office requiring him to "support and defend the Constitution of the United States against all enemies, foreign and domestic," and to "well and faithfully discharge the duties of the office" of the Attorney General of the United States; and being particularly charged, as the chief law officer of the Government, with the duty of prosecuting those guilty of violating the Federal statutes, did prostitute his high office for purposes of personal vengeance by seeking and obtaining an indictment of the said Morse and of his son as directors of the Virginia Shipbuilding Corporation on a charge of having violated the Federal statutes. That at the same time the said Harry M. Daugherty obtained the indictment of three attorneys said to have advised the company in connection with the alleged illegal acts, but failed, neglected, and refused to seek indictment of other directors of the company equally guilty of the alleged violation of the Federal statutes, if any, and also failed to seek the indictment of another attorney—the principal attorney of the company—equally guilty with the attorneys indicted, the said principal attorney being the holder of a position of great responsibility and trust in the office of the Attorney General.

in view of the numerous misstatements of fact which are a matter of public record, is forced to the conclusion that no effort has been made on the part of those preparing these specifications to ascertain the truth, but, on the contrary, they have endeavored, regardless of the truth, to set up a statement of facts that might appeal to the uninformed and influence the unthinking to the detriment of the Attorney General.

### **SPECIFICATION NO. 13.**

The said Harry M. Daugherty, being Attorney General of the United States, and having sworn to uphold the Constitution and to enforce the laws of the United States of America in an oath of office requiring him to "support and defend the Constitution of the United States against all enemies, foreign and domestic," and to "well and faithfully discharge the duties of the office" of Attorney General of the United States; and being particularly charged with the administration and control of the Bureau of Investigation of the Department of Justice, which has widespread discretionary powers affecting vitally the interests of all the people of the United States, knowingly and deliberately used his high office to appoint to positions of great importance and dangerous responsibilities men who are untrustworthy, corrupt, and perilous to the liberties of the people of the United States, with full knowledge at the time of such appointments that they were men of such character. That one instance in support of this charge is set forth in the following statement of facts:

About the year 1907 one Willard N. Jones was convicted of alleged land frauds committed against the Government in the State of Oregon. Subsequent to his conviction an examination was made into the facts attendant thereon and the following matters were established to the satisfaction of and found to be proven by former Attorney General George W. Wickersham.

William J. Burns, at that time being in the employment of the United States Government, got possession in advance of the list of prospective petit jurors who were to be called in the trial before Judge Gilbert in Oregon of the Jones case. There were 2,600 in number. Thereupon Burns and his assistants acting under his direction made an examination to discover the religious and political affiliations of the entire number, placing opposite or under their names reports indicative of their tendencies, such as, for example:

"Convictor from the word go."

"Think he is a Populist; if so, convictor; good, reliable man."

"Hide-bound Democrat; not bound to see any good in Republican."

"Would convict Christ."

"Convict anyone; Democrat."

Opposite the names of those who were regarded as unsatisfactory he would place obscene comments, and in many instances simply the letters "S. B." When the whole number of about 2,600 had been examined and 600 found satisfactory from this standpoint, their names were allowed to remain in the jury box and he telegraphed to the secretary of the then Secretary of the Interior as follows:

"Jury commissioners cleaned out old box from which trial jurors were selected and put in 600 names, every one of which was investigated before they were placed in the box. This confidential."

Before a petit jury so selected Jones was placed on trial, and with him was associated as a defendant a man by the name of Sorensen, an agent of the secret service and in the active employment of Burns and compensated by the Government under the name of George Edwards. Through the influence of this man Jones was induced to accept as jurors men to whom he would otherwise have objected. It may be added that though Sorensen was convicted, he was, of course, never sentenced.

As a result of these and like practices on the part of Burns, Attorney General Wickersham, after fully investigating all of the circumstances, reported to President Taft that—

“The course of the Executive, however, seems to me to be clear, and that is he can not countenance the methods employed in the prosecution of these cases by requiring an enforcement of the sentence imposed in the Jones case.”

Upon the receipt of the report of Attorney General Wickersham, President Taft promptly pardoned Jones.

Mr. Daugherty in 1921 appointed Mr. William J. Burns as Chief of the Bureau of Investigation under the Department of Justice. But prior thereto and when it was reported in the public press that such appointment was under consideration Mr. Samuel Gompers, noting the fact, went before Attorney General Daugherty to protest against the consideration of such appointment, and on making known to the Attorney General the history of W. J. Burns in connection with the conviction of said Jones, Mr. Daugherty in his presence sent for the files, which were produced and which contained the report of Attorney General Wickersham and the direction of President Taft for the issuance of the pardon. Nevertheless, with full knowledge of the facts and with further knowledge as furnished by the report of Attorney General Wickersham that Burns had repeatedly been called on for an explanation of his conduct and had failed to give it, Mr. Daugherty made the appointment above indicated.

At a later period and after the appointment was made, under date of September 17, 1921, Mr. A. P. Macaulay, 509 Lumsten Building, Toronto, Canada, again furnished to the Attorney General a large number of documents tending to show the unfitness of W. J. Burns for the position to which he was named, including a copy of the statement by ex-Attorney General Wickersham, and under date of October 1, 1921, Mr. Daugherty acknowledged the receipt of the same, saying:

“I have been interested in reading your inclosures, which information I had before considering Mr. Burns's appointment. I have known Mr. Burns for many, many years and am quite sure he will render me and the administration faithful and efficient service.”

That as a result of the appointment of Mr. Burns by the said Daugherty the administration of justice is being debauched in the control of this important bureau by the said Burns and that, in relying upon the reports of the said Burns and of a bureau under his direction, the said Daugherty is unable to properly administer the Department of Justice in the interests of the people of the United States.

Wherefore, in view of the facts above set forth, the said Harry M. Daugherty was and is guilty of misbehavior in office highly prejudicial to the public interest, of abuse of his discretionary power, or violating his oath of office, and of a high crime and misdemeanor.



**SPECIFICATION NO. 13.—ANSWER.**

This specification charges that the Attorney General of the United States has knowingly and deliberately used his high office to appoint to positions of great importance men who are untrustworthy, corrupt, and perilous to the liberties of the people with full knowledge at the time of such appointment that they were men of such character. This allegation is aimed, as subsequently appears, at the appointment of William J. Burns as the Director of the Bureau of Investigation of the Department of Justice. The controversy which it is attempted to open up goes back 15 years and goes into the old controversy with regard to the activities of Mr. Burns and the bitter antagonisms aroused by him years and years ago. The Attorney General of the United States believes that your honorable committee is not interested in the personal antagonisms of Mr. Burns, his friends, or his enemies, but is interested solely in the matter of whether or not Mr. William J. Burns is now discharging the duties of the office to which he has been appointed to the satisfaction of the Department of Justice and in the interest of the people of the United States. No charge that is presented in the specification before your committee reflects in any way upon Mr. William J. Burns in the performance of his duties since he has been appointed to his present office. With reference to the matters of ancient history, the Attorney General says to your honorable committee that he has made a most thorough investigation into all of these matters and things alleged in this specification before they were called to his attention in this present instance, and says to your honorable committee that he believes that each and every charge set up against said William J. Burns in this specification is false and untrue.

**SPECIFICATION NO. 14.****SUBDIVISION No. 1.**

The said Harry M. Daugherty, being Attorney General of the United States, and having sworn to uphold the Constitution and to enforce the laws of the United States of America in an oath of office requiring him to "support and defend the Constitution of the United States against all enemies, foreign and domestic" and to "well and faithfully discharge the duties of the office" of Attorney General of the United States, and being particularly charged, as the chief law officer of the Government, with the duty of prosecuting those guilty of violating the Federal statutes, and of protecting the interests of the people of the United States in all financial transactions to which the Government of the United States is a party, has refused to prosecute war grafters criminally; has failed and refused to recover for the Treasury hundreds of millions of dollars wrongfully and fraudulently paid to war contractors; has blocked and interfered with the proper preparation and presentation of the cause of the Government in war-fraud cases; has by the conduct of his department obstructed prosecutions by the removal of competent, zealous, and honest employees and by keeping in charge of war-fraud claims those whom the records show to be either incompetent or dishonest. That the said Harry M. Daugherty has so ignored and refused to consider the evidence of bribery and corruption in the records within the Department of



Justice, such neglect, refusal, and inactivity resulting in the loss to the Government of hundreds of millions of dollars and by the lapse of time making it impossible to secure conviction of the war grafters without and within the Government employ. Among many hundreds of cases the following are cited as typical:

1. That the said Harry M. Daugherty failed, neglected, and refused to prosecute the firm of Briggs & Turavis, of Chicago, Albert Hopkins, Capt. Simon Martin, and Major Wilson for fraud and conspiracy against the United States Government. That the main outlines of the said fraud and conspiracy are as follows: About the middle of October, 1919, Briggs & Turavis, a corporation in the State of Illinois with headquarters at Chicago, Ill., signed contracts with the War Department for the purchase of two lots of shell steel forging, said purchases to be made from Capt. Simon Martin, representing the Ordnance salvage department, and Major Wilson, representing the department of sales. The contract guaranteed the sale and delivery of 100,000 tons of steel within eight months from various locations, some at Chicago, some St. Louis, some Pittsburgh, some Cleveland, some Toledo, and some from other places. At the expiration of eight months the War Department had delivered one-third of the steel purchased and the contract was extended for three months, at the expiration of which time between 50 and 60 per cent had been delivered, when the contract was again extended for three months, expiring about January 1, 1921, at which time the War Department had delivered to Briggs & Turavis altogether about 95,000 tons of steel. From the time the steel was purchased up to 60 days before the expiration of the contract the price of steel advanced \$10 per ton, making a profit to Briggs & Turavis of from one-half to three-quarters of a million dollars on this advance alone. About the time of the expiration of the contract the price of steel went lower and Briggs & Turavis asked for and obtained a cancellation of their contract by the War Department. At that time Briggs & Turavis owed the Government the balance \$514,000, which they refused to pay. After the expiration of eight months without any effort being made by the United States Government to collect the unpaid balance Assistant Secretary of War J. M. Wainwright sent the paper in the case to the Department of Justice, after which time Briggs & Turavis filed a deceitful and unjust fraudulent claim against the War Department for \$1,232,000. An investigator for the Department of Justice reported that the claim was wholly without foundation and a review board reported to Colonel Anderson that there was conclusive evidence of fraud and recommended that the evidence be taken before a grand jury and an indictment asked for. Among other evidence on file in the Department of Justice in this case is a check for \$10,000 given by Briggs to an officer in the War Department—Major Wilson, representing the department of sales. That notwithstanding this clear documentary evidence of fraud, and the testimony of many witnesses who were willing to substantiate the charges not only did the Department of Justice fail and neglect to prosecute those guilty but a settlement was made with the firm of Briggs & Turavis for \$428,000, whereas this firm owed the United States Government \$514,000 and two years' interest, amounting to \$80,000. That the settlement in the above-mentioned case was made upon direct orders and with the knowledge of Harry M. Daugherty that cor-

porations and persons who had tried to defraud the United States Government of a sum approximating \$1,000,000 and who owed more than a half million dollars to the Government were given a receipt in full settlement of the Government's claim against them in return for payment of \$150,000 less than the amount properly owed to the United States Government. That the said Harry M. Daugherty in so settling this case was guilty of a grave abuse of his discretionary powers and a flagrant abandonment of the rightful claim of the United States of America against persons who were guilty of deceit and fraud.

SUBDIVISION No. 1.—ANSWER.

In this specification it is sought to be charged that the Attorney General of the United States has failed and neglected to prosecute the firm of Briggs & Turavis, Chicago, and certain other men connected with them, for fraud and conspiracy against the United States.

Your honorable committee is informed that the contract here sought to be made the basis of this specification was an agreement calling for approximately 100,000 tons of scrap steel and any future surplus; that the War Department, in compliance with its part of such agreement, delivered about 93,500 tons, valued at almost \$2,000,000; that, in compliance with their part of such agreement, Briggs & Turavis paid to the War Department \$1,500,000, leaving the balance of the purchase price to be adjusted after an auditing and accounting of the entire transaction; that the claim was advanced by Briggs & Turavis that a credit was due them for short weights, freight adjustments, and defects in material, and that they were entitled to certain set-offs for certain other defects in quantity representing the difference between the amount contracted for and the amount actually delivered; and that in addition Briggs & Turavis sought to interpose a counterclaim of \$1,000,000. Your committee is further informed that when this said matter came to the attention of the Department of Justice an accounting was immediately directed, and Briggs & Turavis agreed to pay the remaining balance due and owing as the Department of Justice asserted when there had been an adjustment of proper credits, and to prosecute their counterclaim in the Court of Claims. That an adjustment of this remaining unpaid balance has been reached and Briggs & Turavis have paid on account unconditionally, as evidence of their good faith, the sum of \$200,000, and they have offered and agreed to pay the remaining unpaid balance as soon as certain items therein involved have been determined. Your committee is further informed that all of the issues, civil and criminal, involved in this transaction, have been and now are receiving the consideration of the Department of Justice, and that there has been no determination reached as to the final disposition of this matter. And further answering and informing your honorable committee, it is denied that any check from Briggs to Wilson, or from anyone else, has ever been in the files of the Department of Justice.

And further, in this behalf it is pertinent to state that after Major Wilson severed his connection from the Military Establishment of the United States he was instrumental in forming a corporation in the city of Washington, dealing in explosives, and that to finance

such organization he borrowed from Mr. Briggs the sum of \$10,000, which said sum he has repaid with interest, and in proof of such loan and repayment he, the said Major Wilson, has submitted to the Department of Justice his canceled checks given in payment of said sum of \$10,000 with interest to the said Briggs, and he also submitted to the Department of Justice the canceled note for the said sum of \$10,000 and all documents in any way relating or pertaining thereto. And further, and by way of conclusion, the Attorney General states that to answer more specifically the charges with reference to the several alleged war frauds would be subversive of the public interest, inasmuch as it would tend to disclose the facts already in the possession of the Department of Justice, together with any action or actions contemplated by the Attorney General. And further, a more detailed statement with reference to this and other alleged war frauds contained under specification 14 would apprise those who have been charged in this specification with misconduct with reference to their contractual relations with the Government of all the facts obtained by the department after laborious and expensive efforts, and would make this impeachment proceeding tantamount to a bill of discovery whose ultimate effect would be greatly to the detriment of any proceedings contemplated by the Department of Justice and would inure greatly to the benefit of those who may be charged with so-called war frauds.

#### SUBDIVISION No. 2.

2. That the said Harry M. Daugherty has failed and neglected to prosecute the United States Harness Co., a corporation having its principal office at Ranson, W. Va.; that this corporation was formed by four men who had served as procurement officers of the Government who had been active in the purchase of harness, saddles, and other leather equipment during the war. That the said corporation was organized for the purpose of acquiring from the Government the surplus harness equipment which the Government had on its hands at the close of the war. That the names of the men involved were ex-Maj. Joseph C. Byron, ex-Lieut. Col. George E. Goetz, ex-Capt. H. W. Benke, and ex-Capt. Axel F. Cochran. These were the organizers of the said United States Harness Co. The evidence in possession of the said Attorney General Harry M. Daugherty shows that in the conspiracy to defraud the Government there were associated with these men, Mr. E. C. Morse, Director of Sales of the War Department; Lieut. Col. L. E. Hanson, Chief of the Surplus Property Division, office of the Quartermaster General; and Col. A. W. Yates, who was Chief of the Surplus Property Division at the time the negotiations looking to the disposal of this property were first entered into. Besides these are a number of others whose names are known to the said Department of Justice, which has been in possession of all the files as to the conspiracy to defraud the Government since February 8, 1921, upon which date the Graham committee of the House of Representatives transmitted its report and the evidence to the Department of Justice with the recommendation "that the evidence set forth in series 6, parts 67 and 68, and a copy of which report be transmitted to the Department of Justice for such action as the department may deem necessary and proper under the circumstances."

As a result of this investigation of the committee of the House of Representatives and of an independent investigation undertaken by the Department of Justice, which investigation was in charge of Attorney C. B. Brewer, it was recommended to the President that a certain contract by which the United States Harness Co. was to acquire Government property valued at from twenty to one hundred and fifty million dollars be voided for fraud. Acting upon this recommendation of the Attorney General and Assistant Secretary of War J. M. Wainwright, on June 14, 1921, the President did void the contract dated September 24, 1920, and two contracts dated December 9, 1920, made between the Director of Sales of the War Department and the United States Harness Co.; that notwithstanding that the said Harry M. Daugherty has in the official communication referring to acts committed by various people connected with the aforesaid contract said "certain of the acts referred to constitute, in my opinion, violations of sections 37, 112, 113 of the United States Criminal Code, and section 3 of the act of August 10, 1917," no suit has been instituted by the said Harry M. Daugherty to prosecute and bring to justice those guilty of said acts; that the said Harry M. Daugherty has so handled the case as to prevent its speedy trial. Attorney C. B. Brewer, who was first in charge of the prosecution, was taken off the case and Hon. Charles G. Searle was placed in charge. After spending months in the preparation of the case, Judge Searle was relieved of the work of preparing it for trial, and it was put in charge and is in charge of a man named Early; that Attorney C. B. Brewer had the case ready for presentation to court when he was relieved; that Judge Searle had the case ready for court when he was relieved; that the conduct of the case in the Department of Justice under the direction of the said Harry M. Daugherty has been such as to prejudice the cause of the Government and to permit time to run so that there is danger that the statute of limitations may run against these cases; that in the whole conduct of this case the said Harry M. Daugherty has acted in an inefficient, neglectful manner, prejudicial to the interests of the Government of the United States, not only in the manner of securing indictments against those of whom more than a year ago he said had the evidence of their conspiracy but also that he has neglected and failed to recover any money that may be due to the Government under these contracts, which he, the said Harry M. Daugherty, had said were fraudulent.

#### SUBDIVISION No. 2.—ANSWER.

In this specification attempt is made to charge the Attorney General with having failed to prosecute the United States Harness Co. and certain of its officers, alleged to have been formed by "four men who had served as procurement officers of the Government and who had been active in the purchase of harness, saddles, and other leather equipment during the war."

It is then charged generally that there is in the possession of the Department of Justice evidence showing a conspiracy to defraud the United States and that the evidence necessary to prove the conspiracy to defraud the Government was set forth in certain reports of the Graham committee of the House of Representatives. The specification contains certain general and highly indefinite statements to



knowledge of the wrong done the Government by it, the said Harry M. Daugherty has neglected to bring actions and to recover for the Government the money of which it was defrauded, or to indict and prosecute the Government officials responsible; that this neglect constitutes misbehavior and malfeasance in office in violation of the oath of office of the said Harry M. Daugherty.

SUBDIVISION No. 3.—ANSWER.

Under this specification it is sought to charge that the Attorney General of the United States has failed to institute suits to recover from Thomas Roberts & Co., of Philadelphia, sums of money arising, as it is alleged, from a fraudulent sale of surplus meats and due and owing to the United States because the contract was fraudulent in its inception. It is further alleged in the most general terms that "the various phases of this unconscionable sale show that it was the result of a conspiracy on the part of certain War Department officials and criminal negligence on the part of others."

In reply to the charge so sought to be made and alleged, the Attorney General begs leave to say and state to your honorable committee: That the matters involved in this said contract now are receiving and have received, ever since said matter came under the jurisdiction of the Department of Justice, the most careful and painstaking consideration which the Department of Justice and all those having anything to do with the subject matter of this contract can give to it. There has never been at any time a disposition, an inclination, or a conscious purpose, or in fact any purpose, to interfere with, to obstruct, or to in any way delay the proper investigation of this said matter. The Attorney General has done and will do everything in his power to the end that the interests of the United States of America, as they may be disclosed, may be protected; that any and all sums found to be due the United States may be recovered; and that such action may be taken as the facts and circumstances justify and warrant.

SUBDIVISION No. 4.

4. That the said Harry M. Daugherty has failed and neglected to prosecute the firm of Wright-Martin Aircraft Corporation; that the said corporation were made payments under contracts 2250 and supplements thereof for the manufacture of 5,798 Hispano-Suiza motors and spare parts involving the expenditure of \$36,101,752.08, and that an audit of said payments disclosed that the said Wright-Martin Aircraft Corporation was overpaid \$4,705,056.88; that all efforts of the Government to arrive at a fair and just settlement of these overpayments or to collect same from the said corporation failed, and on October 26, 1921, the War Department transmitted to the Department of Justice the file in these cases with the request that litigation be instituted to protect the interests of the United States. That notwithstanding that all the records in the case have been in the possession of the Department of Justice for more than 15 months, no suit has been instituted, the said Harry M. Daugherty has failed and neglected to take any action whatsoever to recover to the Treasury of the United States the money unjustly and unlawfully paid to the Wright-Martin Aircraft Corporation, although the



said Harry M. Daugherty was in possession of evidence to show that the aforesaid corporation charged and collected profits that amounted to 270 per cent and that this corporation maintained a secret service organization for which it charged the Government \$91,925.60, although it was in no way authorized so to do under its contract with the Government; that the pay rolls for this service were not only unauthorized under the contract, but that the amounts charged were excessive in one instance, that of J. W. Wheatley, payments amounting to \$39,500 were made for one year's work. That the Wright-Martin Aircraft Corporation, after its contract was terminated, paid to the Government \$24,379.37 for materials which cost the Government \$792,865.03; that the said Wright-Martin Aircraft Corporation paid to the United States Government \$10,642.64 for special tools that cost the Government over \$1,000,000, and that it continued to use said tools in its operations in the usual course of its business; that all the evidence with respect to these and many other matters disclosing the indebtedness of the Wright-Martin Aircraft Corporation to the United States has been before the said Harry M. Daugherty for more than 13 months, and the said Harry M. Daugherty, although sworn to uphold the Constitution and the law, has utterly failed and neglected to take any steps to collect same and to protect the interest of the Government.

#### SUBDIVISION No. 4.—ANSWER.

##### IN RE WRIGHT-MARTIN AIRCRAFT CORPORATION.

In the specification herein it is sought to be charged that the Attorney General of the United States has failed and neglected to prosecute the firm of Wright-Martin Aircraft Corporation. It is charged that certain overpayments were made to this company and that certain unauthorized expenditures were made and charged without authority to the United States. There are certain other matters alleged as tending to show that amounts due the Government have not been recovered "to the Treasury of the United States." By way of answer to these alleged statements, the substance of which has just been called to the attention of your honorable committee, the Attorney General specifically denies every matter, fact, and thing therein contained and therein sought to be alleged which states, charges, or suggests that there has been any neglect to prosecute said case or to conserve in every possible way the interests of the United States. In truth and in fact, the issues arising out of this controversy have received the best consideration and always the undivided attention of those in charge of war contract prosecutions, and especially in the matter of this particular case every issue in any way arising has been considered and investigated by Mr. Meier Steinbrink, a special assistant to the Attorney General, and those associated with him in the investigation and determination of such matters.

#### SUBDIVISION No. 5.

5. That the said Harry M. Daugherty has failed and neglected to institute suits in the case of the Bridgeport Brass Co., of Bridgeport, Conn. That the War Department about October, 1921, rendered a complete report to the Attorney General showing that the Bridgeport

knowledge of the wrong done the Government by it, the said Harry M. Daugherty has neglected to bring actions and to recover for the Government the money of which it was defrauded, or to indict and prosecute the Government officials responsible; that this neglect constitutes misbehavior and malfeasance in office in violation of the oath of office of the said Harry M. Daugherty.

SUBDIVISION No. 3.—ANSWER.

Under this specification it is sought to charge that the Attorney General of the United States has failed to institute suits to recover from Thomas Roberts & Co., of Philadelphia, sums of money arising, as it is alleged, from a fraudulent sale of surplus meats and due and owing to the United States because the contract was fraudulent in its inception. It is further alleged in the most general terms that "the various phases of this unconscionable sale show that it was the result of a conspiracy on the part of certain War Department officials and criminal negligence on the part of others."

In reply to the charge so sought to be made and alleged, the Attorney General begs leave to say and state to your honorable committee: That the matters involved in this said contract now are receiving and have received, ever since said matter came under the jurisdiction of the Department of Justice, the most careful and painstaking consideration which the Department of Justice and all those having anything to do with the subject matter of this contract can give to it. There has never been at any time a disposition, an inclination, or a conscious purpose, or in fact any purpose, to interfere with, to obstruct, or to in any way delay the proper investigation of this said matter. The Attorney General has done and will do everything in his power to the end that the interests of the United States of America, as they may be disclosed, may be protected; that any and all sums found to be due the United States may be recovered; and that such action may be taken as the facts and circumstances justify and warrant.

SUBDIVISION No. 4.

4. That the said Harry M. Daugherty has failed and neglected to prosecute the firm of Wright-Martin Aircraft Corporation; that the said corporation were made payments under contracts 2250 and supplements thereof for the manufacture of 5,798 Hispano-Suiza motors and spare parts involving the expenditure of \$36,101,752.08, and that an audit of said payments disclosed that the said Wright-Martin Aircraft Corporation was overpaid \$4,705,056.88; that all efforts of the Government to arrive at a fair and just settlement of these overpayments or to collect same from the said corporation failed, and on October 26, 1921, the War Department transmitted to the Department of Justice the file in these cases with the request that litigation be instituted to protect the interests of the United States. That notwithstanding that all the records in the case have been in the possession of the Department of Justice for more than 15 months, no suit has been instituted, the said Harry M. Daugherty has failed and neglected to take any action whatsoever to recover to the Treasury of the United States the money unjustly and unlawfully paid to the Wright-Martin Aircraft Corporation, although the

said Harry M. Daugherty was in possession of evidence to show that the aforesaid corporation charged and collected profits that amounted to 270 per cent and that this corporation maintained a secret service organization for which it charged the Government \$91,925.60, although it was in no way authorized so to do under its contract with the Government; that the pay rolls for this service were not only unauthorized under the contract, but that the amounts charged were excessive in one instance, that of J. W. Wheatley, payments amounting to \$39,500 were made for one year's work. That the Wright-Martin Aircraft Corporation, after its contract was terminated, paid to the Government \$24,379.37 for materials which cost the Government \$792,865.03; that the said Wright-Martin Aircraft Corporation paid to the United States Government \$10,642.64 for special tools that cost the Government over \$1,000,000, and that it continued to use said tools in its operations in the usual course of its business; that all the evidence with respect to these and many other matters disclosing the indebtedness of the Wright-Martin Aircraft Corporation to the United States has been before the said Harry M. Daugherty for more than 13 months, and the said Harry M. Daugherty, although sworn to uphold the Constitution and the law, has utterly failed and neglected to take any steps to collect same and to protect the interest of the Government.

#### SUBDIVISION No. 4.—ANSWER.

##### IN RE WRIGHT-MARTIN AIRCRAFT CORPORATION.

In the specification herein it is sought to be charged that the Attorney General of the United States has failed and neglected to prosecute the firm of Wright-Martin Aircraft Corporation. It is charged that certain overpayments were made to this company and that certain unauthorized expenditures were made and charged without authority to the United States. There are certain other matters alleged as tending to show that amounts due the Government have not been recovered "to the Treasury of the United States." By way of answer to these alleged statements, the substance of which has just been called to the attention of your honorable committee, the Attorney General specifically denies every matter, fact, and thing therein contained and therein sought to be alleged which states, charges, or suggests that there has been any neglect to prosecute said case or to conserve in every possible way the interests of the United States. In truth and in fact, the issues arising out of this controversy have received the best consideration and always the undivided attention of those in charge of war contract prosecutions, and especially in the matter of this particular case every issue in any way arising has been considered and investigated by Mr. Meier Steinbrink, a special assistant to the Attorney General, and those associated with him in the investigation and determination of such matters.

#### SUBDIVISION No. 5.

5. That the said Harry M. Daugherty has failed and neglected to institute suits in the case of the Bridgeport Brass Co., of Bridgeport, Conn. That the War Department about October, 1921, rendered a complete report to the Attorney General showing that the Bridgeport

Brass Co. had been overpaid and had defrauded the Government of the United States out of more than \$700,000, and that this report included a complete audit of the accounts of the Bridgeport Brass Co. and the same pertains to the dealings with the United States Government. That notwithstanding that the War Department found the transactions of this company to be fraudulent and asked that proceedings be instituted to protect the Government, that the said Harry M. Daugherty has for more than one year failed to institute any suit to protect the Government and to recover the amount justly due. That this neglect constitutes a violation of his oath of office and is contrary to the best interests of the Government.

SUBDIVISION No. 5.—ANSWER.

IN RE BRIDGEPORT BRASS CO.

In this specification it is sought to be charged that the Attorney General of the United States has failed and neglected to institute suits in the case of Bridgeport Brass Co., of Bridgeport, Conn. It is further sought to be alleged that the Bridgeport Brass Co. has been overpaid and that the United States has thereby been defrauded out of more than \$700,000. Your honorable committee is informed that the facts and the law applicable to this matter have been carefully audited, digested, and briefed, and that the issues involved therein have received the constant attention of certain special assistants to the Attorney General, who are and have been charged specifically with the sole management and determination of the Government's rights in this particular matter. And further, by way of answer, the attention of your honorable committee is invited to the principal allegation in said specification that the failure and neglect to begin some prosecution of the subject matter of this claim is attributable to the fact that no action has been commenced within the period of one year which is the time that the claim has been under consideration and negotiation. Your committee is further informed that when this matter first came to the attention of the Department of Justice negotiations looking to its final determination and settlement were at once undertaken and plans adopted for the ultimate settlement of this matter, and that they have been constantly before the Department of Justice and have received the best attention of those charged with the disposition of this case.

SUBDIVISION No. 6.

6. That the said Harry M. Daugherty has failed, neglected, and refused to prosecute a suit of the United States Government against the Mackay companies for an accounting of the operation of the Postal Telegraph system for the year beginning August 1, 1918, and ending July 31, 1919, and to compel the Mackay companies to remit the net amount of the funds belonging to the United States Government and unjustly and unlawfully held in the hands of the Mackay Co. on account of said operation. That on February 21, 1921, a bill was filed in the United States District Court for the Southern District of New York, entitled "United States of America, plaintiff, v. Clarence H. Mackay et al., as trustee of the Mackay companies, etc., defendants," and in this suit it was claimed that there was a balance of



Government funds in the hands of the Mackay companies of approximately \$2,000,000. That, notwithstanding that the Department of Justice was in possession of a full audit and of all the facts and in possession of evidence sufficient to sustain the Government's claim to this money, that after a conference between the said Attorney General, Harry M. Daugherty, his assistants, and the counsel of the said Mackay companies, the said Harry M. Daugherty directed that the suit be dismissed, and that therefore the suit was dismissed, to the great loss and injury of the Government of the United States. That in directing the settlement of this suit and in reference to prosecuting the claim the said Attorney General, Harry M. Daugherty, was neglectful of the interests of the Government, and such neglect constituted a violation of his oath of office.

SUBDIVISION No. 6.—ANSWER.

In this specification it is sought to be charged that the Attorney General failed, neglected, and refused to prosecute a suit of the United States Government against the Mackay companies for an accounting of the operation of the Postal Telegraph system for the year beginning August 1, 1918, and ending July 31, 1919. It is further sought to be alleged that the Attorney General failed to compel the Mackay companies to remit the net amount of funds belonging to the United States Government and unjustly held in the hands of the said companies; and that, in directing a settlement of this suit, the Attorney General neglected the interests of the Government and thereby violated his oath of office.

Your honorable committee is respectfully informed that the Attorney General denies every matter, fact, and thing directly, indirectly, or otherwise alleging, charging, or suggesting that he, or anyone connected with the Department of Justice since March 4, 1921, has failed or neglected or refused to prosecute any suit of the United States Government, or that he, or anyone so connected with the Department of Justice, has in any way neglected the interests of the United States Government growing out of or in any way connected with the Mackay companies operating the Postal Telegraph system while such system was operated by or controlled by the United States of America during the year beginning and ending in 1918 and 1919, as heretofore stated.

And, further answering, the Attorney General begs leave to inform your honorable committee that the issue sought to be raised in this specification was substantially whether the compensation which the Mackay companies were entitled to receive, for the use by the United States of the Postal Telegraph lines operated by the United States Government during the period aforesaid, should be measured by the value of the use of the property at the time it was taken over or whether such compensation should be measured by the net financial results of the operation during the entire period that such properties were under Government control. And that the question necessarily arising out of such issue was one of just compensation; that is, whether, under all of the circumstances, the Mackay companies should be compensated in an amount equivalent to the stable earning capacity of the property during such period of time as would reasonably determine the average annual net earning capacity of the



property involved. And, by way of conclusion, the Attorney General alleges and charges the fact to be that, in the determination of this question, he and those associated with him in the Department of Justice concluded and determined that the just compensation to which the Mackay companies were entitled was to be measured, by the method of the cost and net operating expense to the Government during such time as the properties were under governmental control, but by the average annual value of the use of such property as determined by their average net earning capacity; that, in a word, it was and is now the judgment of the Attorney General that just compensation is to be arrived at by determining the value of the stable earning capacity of the property and not by what it might cost those operating the property to operate and maintain it during the period in question; and that the so-called Mackay suits were settled upon the principle of just compensation, with his full approval and with the full approval, knowledge, and consent of those who were associated with him in the Department of Justice.

#### SUBDIVISION No. 7.

7. That the said Harry M. Daugherty has failed and neglected to prosecute the Kenyon Co., a corporation organized under the laws of the State of New York, which had certain contracts with the War Department to supply raincoats and slickers. These contracts were annulled by the War Department, and the Kenyon Co., later, to wit, in 1919, filed a claim for \$697,000 and later increased this claim to \$1,000,000. An investigation and audit by the War Department disclosed that in the claim were many fraudulent entries of meats, duplication and triplication of items, so that there was a large undetermined sum that was erroneously and fraudulently claimed against the Government. This claim of the Kenyon Co. was adjusted and a settlement arrived at by which the Kenyon Co. was to receive \$350,000. That this case was referred by the War Department to the Department of Justice; that it was investigated by Attorneys Charles B. Brewer and James R. Sheppard, and notwithstanding that these men reported there was a good claim and a recovery could be made for the Government no action was taken other than to direct the Treasury not to honor a warrant of \$350,000 issued in the name of the Kenyon Co. That later, upon the representation of the Department of Justice, this stop order was removed and the payment made. Attorneys Brewer and Sheppard made exhaustive reports to the Attorney General and prepared the case for trial, and in their reports they said that they were certain that recovery could be made for the Government as there was evidence of fraud. That James R. Sheppard was the last attorney to work upon the case; that he had all the briefs and all the evidence ready for presentation in court in the latter part of September, 1921; that he was ready to take the case to New York to institute the suit, when, on October 1, 1921, he was summarily relieved and discharged upon the ground that his work had been completed. That since the relief of Attorney Sheppard nothing had been done. No suit had been instituted and in the handling of this case the said Attorney General Harry M. Daugherty has been neglectful of the interest of the Government of the United States. That such neglect constitutes grave misbehavior on the part of the said Attorney General and is a violation of his oath.

## SUBDIVISION No. 7.—ANSWER.

In this specification it is sought to be charged that the Attorney General of the United States has neglected to prosecute the Kenyon Co., a New York corporation, having certain contracts with the War Department to supply raincoats and slickers. It is further charged that no action has been commenced by the United States to recover under such contractual relations, the amounts or amounts which the specification seeks to charge are due and owing to the United States of America.

In this connection, and by way of specific answer, the Attorney General begs leave to inform your honorable committee that such charges as are attempted and sought to be alleged in this specification are untrue in fact and devoid of any evidence whatsoever to sustain them. The Attorney General further informs your committee that there has been no neglect and no unnecessary delay in the matter of protecting the interests of the United States or in the beginning of legal actions, either civil or criminal, to protect the United States in such interest or interests as it may have in the matters attempted to be charged in this specification.

The Attorney General further says that the matters arising out of the contract of the Kenyon Co. with the United States have received the very best and the undivided attention of those charged with the investigation of such matters, and that the issues here involved have been assigned to the most experienced investigators and special assistants to the Attorney General now connected with the Department of Justice.

## SUBDIVISION No. 8.

8. That the said Harry M. Daugherty has failed and neglected to prosecute the American Electro Products Co., a Canadian concern, that secured a loan of \$1,750,000 from the United States Government for the erection of a plant and the production of glacial acetic acid at Shawenegan Falls, Canada. That there is on file an opinion of the Judge Advocate General to the effect that this contract is so inimical to the interest of the Government as to be beyond the power of any agent of the Government to incorporate the terms in a binding contract. That on April 20, 1921, Hon. James M. Wainwright, Assistant Secretary of War, requested the Attorney General that such litigation be instituted as deemed advisable to protect the Government's interests and that suits be instituted to recover the sum of \$1,750,000 together with interest from February 28, 1918. That although said request has been before the said Harry M. Daugherty, Attorney General of the United States, for 18 months, he has neglected and failed to institute proceedings to properly safeguard the interests of the Government and to recover the money due to it. That this failure to institute suit constitutes misbehavior in office and the violation of the oath of office of the said Harry M. Daugherty.

## SUBDIVISION No. 8.—ANSWER.

In this specification it is sought to be charged that the Attorney General of the United States has failed and neglected to prosecute the American Electro Products Co., a Canadian concern, and that there

is due and owing to the United States, growing out of a certain contract entered into with the United States, the sum of \$1,750,000, with interest from February 28, 1918.

The Attorney General, by way of answer, begs leave to state that the American Electro Products Co. asserted and filed a large claim against the United States, and under the date of September 11, 1922, duly filed its petition to recover such claim in the Court of Claims in the city of Washington, D. C. That, on November 20, 1922, the United States Government filed its answer generally to such claim and set up, by way of counterclaim in its said answer, the rights of the United States Government in the matters sought to be charged in the specification herein.

The Attorney General, further answering, says that the Department of Justice and those charged with the prosecution of this matter deemed it unwise to go into the Dominion of Canada and in a Canadian court commence such action and seek to have the contract, made the basis of said charge, vacated and set aside; and further, by way of conclusion, the Attorney General denies every matter, fact, and thing in said specification sought to be charged which in any way alleges or attempts to allege neglect, indifference, or failure on the part of the Department of Justice and the Attorney General to protect the interests of the United States in and to this contract, and in that behalf specifically alleges and asserts that by and under the procedure now adopted and being pursued, the rights of the United States of America will be passed upon by an American court, and that to have pursued the course suggested in said specification would have eventually resulted in the United States Government being compelled to prosecute, if the decision of the Canadian court had been adverse, its appeal in the city of London, England, before the proper courts there having jurisdiction and to which all such appeals of this character are directly taken from the Canadian tribunals.

Wherefore, in view of the facts above set forth, the said Harry M. Daugherty was and is guilty of misbehavior in office highly prejudicial to the public interest, of abuse of his discretionary power, of violation of his oath of office, and of high crimes and misdemeanors.

#### SUBDIVISION No. 9.

9. That the said Harry M. Daugherty has failed and neglected to prosecute Harry Miller and H. Miller & Co. and associates to recover and protect the Government against loss sustained because of graft, fraud, gross irregularities, and a clear conspiracy to defraud in the matter of the sale of surplus war supplies. On November 3, 1921, the said Harry M. Daugherty was advised that at that time the loss from the transactions with said Miller and associates approximated \$420,725. That more than one year has elapsed since the details of these frauds and the evidence to sustain the charge of fraud in these cases was placed in the hands of the said Attorney General Harry M. Daugherty, and that no suit has been instituted to recover the moneys out of which the Government was defrauded by the transactions of these men and those who cooperated with them.

## SUBDIVISION No. 9.—ANSWER.

In this specification there is sought to be charged, in the most general and disconnected way, failure and neglect on the part of the Attorney General to prosecute Harry Miller and H. Miller & Co. and associates and to protect the Government against loss sustained because of graft, fraud, gross irregularities, and a clear conspiracy to defraud in the matter of the sale of surplus war supplies.

Your honorable committee is informed that every matter, fact, and thing in any way relating to the claim or claims, the right of interest of the United States in and to any action or actions against Harry Miller and H. Miller & Co. have been actively and vigorously investigated by the special assistant to the Attorney General in charge of such matters in the war transactions section. Your honorable committee is further informed and advised that to more specifically answer and disclose what the Department of Justice and the Attorney General plan and what has been accomplished would be highly prejudicial and subversive of the public interest and would tend to disclose and make known facts in the possession of the Department of Justice and the Attorney General, thus apprising those who have been charged with misconduct in this specification of just what the Department of Justice, the Attorney General, and his advisers contemplate doing in the matter of protecting the rights and interests of the United States in and to any matter arising out of the charges alleged in this specification. And, by way of conclusion, the Attorney General specifically denies that there has been any neglect on the part of the Department of Justice, or himself, or on the part of anyone connected with the Department of Justice or with him as the Attorney General, to prosecute any matter arising out of this alleged conspiracy on the part of Harry Miller and H. Miller & Co. to defraud the United States in the sale of surplus war materials.

## SUBDIVISION No. 10.

10. That the said Harry M. Daugherty has failed and neglected to prosecute the Standard Aircraft Corporation and the Standard Aero Co., two concerns controlled by Mitsui & Co., Japanese bankers, fiscal agents of the Japanese Government, to recover more than \$6,500,000 overpaid to these concerns. That the said Harry M. Daugherty nearly two years ago was advised that the Standard Aircraft Corporation and the Standard Aero Co. were undergoing liquidation and that the assets of same were being rapidly dissipated. That it was necessary if the Government's interests were to be protected that prompt action be taken by the Department of Justice. That notwithstanding this notice the said Harry M. Daugherty failed to take any action to protect the Government, and this failure and evasion on the part of the Attorney General had endangered if it has not made impossible for the Government to recover said sums. That this case was in charge of one Abraham F. Myers, an employee of the Department of Justice, and that said Myers, while handling this case, notified the Aircraft Service that no further information was to be given with respect to the case to any person connected with the Department of Justice except through him. That this action of Myers blocked a complete investigation, and that a short time there-



after it was established and brought to the attention of the said Harry M. Daugherty and that the said Myers was placed in his position in the Department of Justice through the influence and upon the recommendation of the attorney for Mitsui & Co. That the failure and neglect of the said Harry M. Daugherty to bring the suits recommended by the War Department constituted acts prejudicial to the interests of the Government and in violation of the oath of office of the said Harry M. Daugherty.

SUBDIVISION No. 10.—ANSWER.

In this specification it is sought to be charged that the Attorney General of the United States has failed and neglected to prosecute the Standard Aircraft Corporation and the Standard Aero Co., controlled by certain Japanese bankers, and to recover a large sum of money alleged to have been overpaid to these concerns.

In this connection and by way of answer and information the Attorney General alleges and shows unto your honorable committee that the only communication which the Department of Justice has received from the War Department on the subject matters referred to in said specification is a letter dated February 13, 1922, requesting that the Department of Justice use its good offices to obtain for the use of the War Department in its work of auditing the accounts of the Standard Aero Co. certain records from the trustee in bankruptcy of that company and suggesting that these records be procured through the United States attorney in New Jersey; that this communication from the War Department did not request or suggest any action by the Department of Justice other than the procuring of these records; and that in pursuance of such request the Department of Justice did direct that the United States attorney comply, as far as lay within his power, with the request of the War Department. And further answering, the Attorney General alleges and states the fact to be that a complete and exhaustive examination of the files of the Department of Justice fails to disclose the presence of any audit of the accounts of these companies as having been made and furnished by the Department of War; and, further, in this behalf your honorable committee is informed and advised that the work of auditing any of these so-called war transactions is always carried on by the department in which they arise, and that the Department of Justice can not, and in fact does not, institute or assume to institute legal proceedings until such audits are completed and submitted to the Department of Justice for such action as the facts may require and the law may warrant.

And further answering, the Attorney General denies each and every matter, fact, and thing sought to be alleged and charged in said specification, directly or by innuendo, that the Department of Justice, the Attorney General, or any special assistant to the Attorney General, or any attorney or employee of the Department of Justice has failed and neglected to conserve the interests of the United States in any matter arising out of the overpayment to the companies therein mentioned of any amount or sum, and expressly denies that anyone connected with the prosecution, preparation, or examination of the matters relating to said companies was appointed to any position in the Department of Justice through the influence or upon the



recommendation of the attorney for said companies or through the influence or upon the recommendation of anyone connected with said companies. And further and by way of conclusion, the Attorney General specifically alleges and charges the fact to be that to answer more specifically the charges sought to be alleged in this specification would be highly prejudicial and subversive of the public interest, and would tend to disclose, and in fact make known, such facts and plans as are now in the possession of the Department of Justice, and would apprise and inform those who are charged in said specification with indebtedness to the United States Government of all the facts obtained by the Department of Justice after the most laborious and painstaking efforts, and would make and tend to make this proceeding tantamount to a bill of discovery whose ultimate effect would be greatly to damage any proceeding now contemplated or hereafter contemplated by the Department of Justice, and would greatly damage the United States of America and equally benefit those who may be charged with complicity in the so-called war frauds.

The Attorney General states that to answer more specifically the charges with reference to the alleged war frauds would be subversive of the public interests, inasmuch as any more detailed disclosure would tend to make known the facts already in the possession of the Department of Justice, together with any such action or actions as might be contemplated; and that to make a more detailed statement with reference to the facts and circumstances connected with these claims and other alleged war frauds alluded to and sought to be charged under specification 14 would apprise and inform those who have been charged in these specifications and allegations with misconduct growing out of their contractual relations with the Government of all the facts secured by the Government and the Department of Justice after the most laborious and painstaking effort; and that any such detailed disclosure would be to make this proceeding before your honorable committee tantamount to a bill of discovery whose ultimate effect would be greatly to the detriment of any action or proceeding which the Department of Justice might contemplate bringing and would inure greatly to the benefit of any person or persons who might be charged, civilly or criminally, with the so-called war frauds.

In response to the general accusations that the Government business is not being transacted expeditiously, honorably, and in a painstaking manner, the Attorney General begs leave briefly to advise that during the whole period since the change of administration and the reorganization of the department which followed, all persons connected with the Department of Justice available for that work have been industriously engaged in investigating the so-called war-fraud transactions and preparing the pleadings and collecting the evidence upon which proper actions affecting such transactions might be brought to trial; that indescribable interferences, such as unwarranted charges of neglect and unfounded insinuations of inactivity in this connection have interfered somewhat with this work. Notwithstanding the widely scattered witnesses and documentary evidence, the interferences, and the vast amount of work necessary in the attempt to reach a fair and judicial conclusion as to what actions, if any, should be commenced, and what amount, if any, should be claimed in such actions, there have been filed by the

Department of Justice in the courts of the country more than 30 important civil suits for the recovery of more than \$150,000,000 out of which it is claimed the Government was defrauded. In addition thereto more than 40 persons have been indicted for crimes growing out of such so-called war-fraud transactions, and all of those civil and criminal suits are being presented and will be tried as quickly as the courts are able to assign them.

Grand juries are now and have been for months investigating criminal phases of many transactions. Those engaged in the work are preparing pleadings to commence actions for the recovery of many millions of dollars, which will be filed in due course. The Department of Justice can not, and it will not, publish in advance what action it proposes to take in any case or discuss publicly the name of any person under consideration before or during a grand-jury investigation. Consideration must be given to the interests of men and concerns transacting business with the Government who may be innocent of any wrongdoing, as most of them are, and no action will be taken except on substantial evidence justifying it.

#### CALL FOR DOCUMENTS.

In connection with the foregoing bill of specifications and the charges contained therein, I request and demand that your committee require the production by the Department of Justice of all letters, telegrams, briefs, memoranda of conversations and conferences, reports of bureaus, investigators, and agents, and all other papers or documents of any kind whatsoever in the files of the Department of Justice or of the said Harry M. Daugherty in connection with or in any matter related to any of the matters mentioned in this bill of specifications, and in particular all such documents with reference to any of the following cases:

- Southern Pine Association.
- Yellow Pine Association.
- West Coast Lumbermen's Association.
- Georgia-Florida Saw Mill Association.
- North Carolina Pine Association.
- Northern Pine Manufacturers' Association.
- Western Pine Manufacturers' Association.
- California Sugar & White Pine Manufacturers' Association.
- California Pine Manufacturers' Association.
- Southern Cypress Manufacturers' Association.
- Redwood Manufacturers' Association.
- California Redwood Association.
- Redwood Sales Co.
- Redwood Shingle Association.
- Feather River Pine Association.
- Northern Hemlock & Hardwood Manufacturers' Association.
- Montana Lumbermen's Association.
- Michigan Hardwood Manufacturers' Association.
- National Lumber Manufacturers' Association.
- Southeastern Lumbermen's Association.
- Southeastern Cross Tie Manufacturers' Association.
- American Tobacco Co.
- P. Lorillard Co.
- Liggett & Myers Tobacco Co.
- Tobacco Products Corporation.
- Bloch Bros. Tobacco Co.
- Scotten-Dillon Co.
- National Implement & Vehicle Association.
- Southern Wagon Manufacturers' Association.

The Carriage Builders' Association.

The National Federation of Implement & Vehicle Dealers' Association.

The Eastern Federation of Farm Machinery Dealers.

Macbeth-Evans Glass Co. et al.

Mathieson Alkali Works et al.

Cumberland Glass Manufacturing Co.

National Malleable Casting Co. et al.

Maple Flooring Manufacturers' Association.

California Packing Corporation.

Ernest B. Muller Co.

Southern Wholesale Grocers' Association.

Ducan's Trade Register.

Goodman Manufacturing Co. et al.

Pioneer Bindery & Printing Co.

Correspondence with Federal Trade Commission or any official or employee thereof with reference to any matter.

Correspondence with the New York State Joint Legislative Committee on Housing, with any member thereof, or with Hon. Samuel Untermyer.

Correspondence with the United States Committee on Housing and Reconstruction.

All papers and documents of every description whatsoever relating to the activities of "open-price associations" and of other trade associations; particularly all memoranda bearing on conferences held by lobbyists and other paid representatives of these associations with the Attorney General of the United States or with any representative of the Department of Justice or with any personal representative of Harry M. Daugherty; especially all memoranda and other documents bearing on plans to so revise the activities of the above-mentioned "open-price associations" and other trade associations as to bring these activities within the cloak of the law.

All papers and documents relating to the enforcement of the safety statutes of the United States, particularly the reports of the Bureau of Locomotive Inspection and of the Interstate Commerce Commission, with respect to alleged violations of the safety statutes of the United States from January 1, 1922, to the present date; especially all correspondence between the President of the United States and the Attorney General of the United States and between the Department of Justice and representatives of the various railway labor organizations relating to alleged violations of safety statutes by railway.

All documents relating to the employment of Maj. William O. Watts, his activities in the Department of Justice, and his dismissal from the department; particularly those papers which relate to any recommendations that the said Maj. William O. Watts be dismissed from the Department of Justice; and especially any reports made to the Department of Justice, to the Bureau of Investigation of the Department of Justice, or to any other person in the Department of Justice regarding the movements of the said Maj. William O. Watts after his dismissal from the Department of Justice.

All documents of any kind or description whatever in connection with the appointment of James H. Wilkerson to be judge of the United States District Court for the Northern District of Illinois, Eastern Division.

All documents relating to equity suit 2943, entitled United States v. The Railway Employees Department, American Federation of Labor, Bert M. Jewell et al., and particularly all reports of agents of the Department of Justice or of the Burns National Detective Agency or of other detective agencies with reference to the above case in any of its phases; and especially a statement as to the number of such operatives employed upon the above-mentioned case from its inception to the present day, and the cost to the Government of such employment.

All documents relating to the conduct of the office of the United States attorney for the southern district of Illinois, especially a report of Col. John V. Clinnin and a report of the Illinois Bar Association with reference to Special Assistant United States Attorney Le Bosky and other matters.

United Gas Improvement Co.

Welsbach Co.

Cities Illuminating Co. (Inc.).

Samuel E. Dodine.

Randall-Morgan.

Charles Patterson.

Sidney Mason.

George M. Landers.

Arthur E. Shaw.

William Findlay Brown.

Eugene S. Newbold.

All documents bearing upon the modification of the consent decree issued in the New York, New Haven & Hartford Railroad case, particularly all the correspondence between the Attorney General of the United States or any other official of the Department of Justice and the attorneys or officials of the New York, New Haven & Hartford Railroad or any representative of the said railroad; and all letters, telegrams, memoranda of conferences, and all other documents whatsoever bearing upon the loans authorized by any bureau or commission in the executive departments of the United States Government, to be made or contracted for or on behalf of the New York, New Haven & Hartford Railroad.

The General Electric Co.

The Cement Trust.

The pardon of Charles C. Morse.

Charles C. Morse and other officials of the Virginia Shipbuilding Corporation.

Reports of investigators assigned to shadow Members of either House of Congress, and especially the names and number of such investigators, together with a statement of their compensation from the time of their assignment to such duties to the present date.

Reports of all investigators assigned in connection with the arrest of Communists at Bridgeman, Mich., and in connection with the prosecution of the persons arrested in this case, together with full list of such investigators and their compensations from the beginning of such assignment to the present date.

All documents and correspondence with or with relation to Thomas D. Felder, of New York, or any cases in which the said Felder appeared as attorney or is in any way interested, especially the cases of the ship *J. M. Young*, the Continental Wine Co., of Philadelphia, and Harold H. Hart, Thomas Reedy, and Michael Lynch, former employees of the Federal prohibition office in New York.

All documents relating to any oil lands in the State of California, or elsewhere, title to which was obtained by the Standard Oil Co. of California, or by any other corporation or individual by purchase from the State of California or otherwise; especially a certain letter written in the handwriting of the said Harry M. Daugherty and addressed to Leslie G. Garnett, Assistant Attorney General of the United States, on or about the 1st of May, 1921, or on any other date.

All documents relating to the pardon of George Meyers, multimillionaire, of Ohio, convicted of violation of the Mann White Slave Act.

All documents relating to the pardon of one Nobbie, wealthy New Jersey man, convicted of violation of antitrust law.

All documents of any kind bearing upon the appointment of William J. Burns as Chief of the Bureau of Investigation of the Department of Justice, and particularly the following papers: The report upon the Jones application for pardon submitted upon date of May 10, 1912, by Attorney General Wickersham to Hon. William H. Taft, President of the United States. The indorsement signed by President Taft, or letters written in connection with such application for pardon. The letters of A. P. Macauley to the President, dated September 17, 1921, and the inclosures therewith. Copy of the reply of the Attorney General under date of October 1, 1921, to Mr. Macauley.

All the papers in the case of Capt. Robert Fay, of the late Imperial German Secret Service, convicted in May, 1916, of having attempted to blow up a British ammunition ship in New York Harbor and sentenced to eight years' imprisonment, and later secretly pardoned on August 31 by President Harding on the recommendation of the Attorney General and smuggled out of the United States as an undesirable alien; all the correspondence between the Department of Justice and Doctor Fowler, prison physician at Atlanta, Ga., appointed by Attorney General Daugherty, in connection with this case; and in particular all the documents in possession of the Department of Justice bearing upon the above-mentioned case.

All the letters, telegrams, memoranda of conferences, and all other documents whatsoever in the possession of the Department of Justice or of Attorney General Harry M. Daugherty relating to advice given by the said Harry M. Daugherty to candidates in the last elections for members of the Senate and House of Representatives, with relation to the Federal laws bearing upon campaign expenses; and particularly all such letters, telegrams, memoranda, or other documents containing advice given by the Attorney General to candidates for office with regard to their liability under the Federal laws for the expenditure of money in either the primaries or general election.

All reports of attorneys and employees in the war-fraud section of the Department of Justice showing the official designation, salary, date of appointment and assignment to war-fraud section, number of cases handled, and all other activities of the war-fraud section; especially such reports rendered in response to a request of March 28, 1922, by Attorney Myers and in response to a request of April 19, 1922, by Colonel Goff; and particularly all the documents relating to the following war-fraud cases:



Briggs & Turavis, Albert Hopkins, Capt. Simon Martin, Major Wilson, Wright-Martin Aircraft Corporation, United States Harness Co., American Electro Products Co., Standard Aircraft Corporation, Standard Aero Co., The Mackay Companies (Telephone), C. Kenyon Co. (Inc.), Thomas Roberts & Co., Harry Miller and H. Miller & Co., Chatham Cotton Co., Berkshire Trading Co., Seneca Trading Co., F. W. Jones (Inc.), Universal Sales Co., Sigmund Eisner (and Eisner, Greenbaum & Weil), Bridgeport Brass Co., Maxwell Motor Co., Muscle Shoals cases (Muscle Shoals), Standard Steel Car Co., Jones & Laughlin Steel Co., American Can Co., Domestic Coke Co., Stain Burn Camp & Field Equipment Co., C. J. Ramsburg, H. Koppers Co., Seaborn Shipyards Co., John F. Blain, Grays Harbor Motorship Corporation, Darby Manufacturing Co., Henry Moss & Co., Briar Hill Steel Co., National Enameling & Stamping Co., United Metals Selling Co., Col. Edward A. Deede, Siems-Carey Corporation, A. Bentley & Sons Co., Rinehard & Dennis, D. W. McGrath & Sons and Frank J. McGrath, Bates & Rogers and Mike Lorden, Air Nitrates Corporation, Holt Manufacturing Co., Chandler Motor Car Co., Reo Motor Car Co., The Pittsburgh Crucible Steel Co., Domestic Coke Corporation, International Harvester Corporation, Indiana Coke & Gas Co., Rainey-Wood Coke Co., Citizens Gas Co., Sloss-Sheffield Steel & Iron Co., Seaboard By-Products Co., Tennessee Coal, Iron & Railway Co., Tennessee Coal & Iron Co., Henry Moss & Co., Apex Fish Co., Booth Fisheries Co., Cascade Packing Co., Salina Fisheries Co., Pacific-American Fisheries Co., American Packing Co., Everett Packing Co.

I respectfully request and demand that your committee call upon the Federal Trade Commission for the production of all correspondence with the Department of Justice and also all papers, documents, and evidence transmitted by the Federal Trade Commission to the Department of Justice since January 1, 1921.

I also request and demand that the War Department and the Navy Department be required to produce all correspondence between those departments and the Department of Justice, together with all documents transmitted by those departments to the Department of Justice since January 1, 1920.

Respectfully submitted.

OSCAR E. KELLER.

#### CALL FOR DOCUMENTS—ANSWER.

In and under the heading "Call for documents" there is a demand that your honorable committee require the Department of Justice to produce all letters, telegrams, briefs, memoranda of conversations and conferences, reports of bureaus, investigators and agents, and all other papers or documents in the files of the Department of Justice or in the files of the Attorney General, in connection with any and all matters mentioned in the foregoing specifications; and that all documents in any way relating to upward of 130 separate and distinct claims, suits, actions and indictments be taken from the files of the Department of Justice and submitted to your honorable committee, not for the inspection and use of your committee, but for such uses as the parties and interests responsible for these proceedings may see fit to make of them. In this connection the Attorney General begs leave to advise and inform your honorable committee that these documents are of an official character, and that to submit them to the inspection of anyone not a member of the Department of Justice would be highly prejudicial to the best interests and subversive not only of the rights of the people of the United States, but would be violative of the rights of those whose confidences, as many of these documents reflect, were given to the Government of the United States upon the express official understanding that such confidences would be treated and preserved as inviolate. Further, in this behalf,



the Attorney General says that a mere casual perusal of this demand not only indicates the motive but reflects the character of this entire proceeding. That it shows that back of this so-called bill of impeachment stands arrayed certain radical leaders of certain organizations seeking to serve notice upon every future Attorney General that if he dares enforce the laws of the United States against such organizations he does so under the pain and penalty of being hailed before the Senate of the United States, sitting as a high court of impeachment under the Constitution. That it shows that back of this so-called bill of impeachment, directing, maintaining, and encouraging its prosecution, stands arrayed "the profiteers, the grafters, the so-called war defrauders, and all of those who seized upon the opportunity arising from the emergencies of war" to take advantage of their Government, that they, by unconscionable and unscrupulous means, may know what those charged with bringing them to the bars of justice have secured as the result of the most painstaking, faithful, and earnest efforts which it has been possible for the Attorney General of the United States, and those associated with him, to give to the solution of these most confusing and perplexing problems.

The Attorney General feels constrained to suggest to your honorable committee that by reason of the extraordinary condition arising out of the Great War many new legal questions have arisen for decision and the volume of business has been multiplied many fold, all of which has necessitated and does still necessitate that the Department of Justice and the Attorney General, as its chief officer, in their solution and determination, bring to bear not only an infinite capacity to take pains, but such careful and mature judgment as they merit and require. The Attorney General of the United States will assist the committee by promptly responding to its request for assistance and information in connection with any charges which in the opinion of the committee would constitute impeachable offenses if true.

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HEARING BEFORE THE JUDICIARY COMMITTEE, DECEMBER 4, 1922.

COMMITTEE ON THE JUDICIARY,  
HOUSE OF REPRESENTATIVES,  
*Monday, December 4, 1922.*

The committee met at 10.30 o'clock a. m., Hon. Andrew J. Volstead (chairman) presiding.

**STATEMENT OF HON. OSCAR E. KELLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA.**

The CHAIRMAN. Mr. Keller, what arrangement do you want to make in regard to this hearing? What are you ready to do?

Mr. KELLER. Well, Mr. Chairman, I have complied with the wishes of the committee in filing the bill of particulars as you requested. Those were prepared by men who are interested in this impeachment proceeding with me and certain lawyers and attorneys in briefing it. I think my letter to you is pretty clear exactly where I stand up to this time. I say in my letter that the resolutions now before you, introduced by myself, will give you the power to appoint a committee to make a real investigation in the regular way.

The CHAIRMAN. We are the judges of what is the regular way, Mr. Keller.

Mr. KELLER. I am just giving it to you as I see it. My resolution is before you, and I feel I will not do anything more than what I have filed now until you pass that resolution which will give you the authority to subpoena witnesses and such papers as you need. It seems to me that the bill of particulars points out very clearly that if true they are impeachable offenses, and to hold a hearing of that kind where we shall present evidence and witnesses——

The CHAIRMAN. When will you be ready to present your evidence?

Mr. KELLER. Within any reasonable time after you pass the resolution and appoint a proper committee to hear such evidence.

The CHAIRMAN. Let me see if I understand you. You do not intend to proceed until we can pass a resolution?

Mr. KELLER. That is the idea. I think I have presented all that is necessary.

The CHAIRMAN. And you say that despite the fact that under the practice that has obtained here we can go on and conduct this examination without getting any more authority. In the Wilfley case, which is practically on all fours with this case, it was submitted, the same as this was, to the Judiciary Committee for the purpose of taking testimony to determine whether there was a prima facie case. The committee proceeded with the hearing, swore the witnesses, and conducted the examination, and then determined that fact. In this instance, the resolution which you refer to was before the House, and the House could have passed it at once if it had seen fit; but instead of that, it sent the resolution to us for the purpose of ascertaining the facts so as to determine that question. Now, having the power to investigate, we are here to hear testimony, and it is for us to determine, and not for you, the order of procedure.

Mr. KELLER. Have you the power to subpoena witnesses now?

The CHAIRMAN. Whenever it is necessary to get witnesses we will determine whether we will go to the House for that purpose or not.

Mr. KELLER. Well, Mr. Chairman, that is just the point why we say we should wait until you pass the resolution.

The CHAIRMAN. What witnesses do you want?

Mr. KELLER. We are ready to present them whenever you give us a committee where we should present them.

The CHAIRMAN. I want you to understand that this committee controls the procedure and that you must conform yourself to what has been the custom in these cases.

Mr. KELLER. I do not intend to run the committee, Mr. Chairman, but I do not care what the procedure has been, the question is what is the right thing to do.

The CHAIRMAN. We are the ones to determine what is the right thing to do. We are here charged with a duty by the House to make a preliminary investigation.

Mr. KELLER. Well, Mr. Chairman, I have made it very clear in my letter where I stand, and I rest right there, and as to the responsibility, you say you have the responsibility and you shall have the responsibility of what will be done.

Mr. GRAHAM. Will you read that portion of the letter in which you make it clear where you stand?

Mr. KELLER. My attorney will take care of that for me.

**STATEMENT OF MR. JACKSON H. RALSTON, OF WASHINGTON, D. C.,  
ATTORNEY FOR HON. O. E. KELLER.**

Mr. RALSTON. Mr. Chairman——

Mr. GRAHAM. Will you please give your full name?

Mr. RALSTON. Jackson H. Ralston.

Mr. FOSTER. Mr. Keller, the committee has been furnished this morning an answer filed by the Attorney General. Have you a copy of that?

Mr. KELLER. No, sir; I have not.

Mr. FOSTER. I think you should have a copy of it.

Mr. RALSTON. Mr. Chairman and gentlemen of the committee, it seems to me——

Mr. GRAHAM. Before you begin, I want to say that I have asked a simple question and a speech is not required to answer it; but let me know what part of the letter Mr. Keller stands on.

Mr. RALSTON. I had not the design of making a speech at the present time.

Mr. GRAHAM. Can you not point out that part of the letter?

Mr. RALSTON. Mr. Keller is looking for it at this moment.

Mr. GRAHAM. I would like to have that now.

Mr. RALSTON. I can take my seat if the committee wishes me to do so. Mr. Keller is finding the particular point he wants brought forward, but there are certain things I think should be cleared up, Mr. Chairman and gentlemen of the committee, before the committee is ready to proceed any distance.

Mr. FOSTER. May I ask you a question? Is it your understanding that the chairman of this committee at this time has authority to swear witnesses; not to subpoena but to swear witnesses who may be offered here?

Mr. RALSTON. Is he empowered to do that?

Mr. FOSTER. Is there any question in your mind about that?

Mr. RALSTON. I am perfectly willing to take the judgment of the committee on that.

Mr. FOSTER. I thought perhaps you had investigated the matter of whether there is any question about the chairman of this committee at this time having authority to put witnesses under oath if the witnesses were tendered. I thought perhaps you had gone into that question.

Mr. RALSTON. I am not inclined to offer any dissent to that opinion; but this I want to say: Our record is not commenced to be straight. Mr. Keller was called upon to make a certain showing. Mr. Keller has, off the record, as I understand it, made that showing. Now, my first request and suggestion to the committee is that Mr. Keller's letter of December 1, 1922, with the accompanying documents, be spread upon the report of to-day's proceedings and made a part of them. That shows where we are here.

Mr. BIRD. Mr. Chairman, may I ask the gentleman a question? Do you mean this written statement here is a showing?

Mr. RALSTON. Yes.

Mr. BIRD. Do you mean it is evidence?

Mr. RALSTON. No; not evidence, but it is a showing.

Mr. BIRD. Then it is not a showing.

Mr. RALSTON. It tells the committee the basis of Mr. Keller's claim. It is a part of the record here, and without it the committee is proceeding absolutely in the dark. The committee called for it, feeling that it was necessary, as it was under the vague terms——

Mr. GOODYKOONTZ. It is filed and is a part of the record; what are you talking about?

Mr. RALSTON. I am asking that it be made a part of the record of to-day's proceedings, so that you may have a starting point.

The CHAIRMAN. I do not think you need concern yourself about that. It has been filed here and is a part of the proceeding, of course.

Mr. RALSTON. If it is understood that it is a part of the record——

The CHAIRMAN. So far as the letter is concerned, which is not in answer to the request, it is for the committee to determine whether that shall be printed or not. The specifications filed in compliance with the request are here as a part of the record.

Mr. RALSTON. Then, if I understand you, Mr. Chairman, those specifications will be part of to-day's proceedings.

The CHAIRMAN. Oh, there is no question about that.

Mr. RALSTON. I wanted to have that clearly understood, so we might know about it, and then there is one other proposition: I see by the morning's papers that the Attorney General has filed what he considers to be a reply to those specifications. I think, in fairness to him and in justice to those who have to meet anything he has to say or has said, they should also appear as part of the record of to-day's proceedings. I, myself, have never seen a copy of them, and I do not know where we stand.

The CHAIRMAN. We make the record and you do not need to worry at all about the record. When we leave anything out that is material, you can complain, but so far there is no trouble about that.

Mr. RALSTON. I may say that I think the chairman will bear me out that I am pursuing the usual course.

Mr. FOSTER. I think the committee is in sympathy with your notion, but the question of making up the record is with the committee, and in my judgment there is nobody on the committee who will question the fact that those statements should go in the record. It is simply a question of procedure and whether the committee should make them a part of the record at this time when it is inquiring whether Mr. Keller is ready to go ahead or not.

Mr. RALSTON. I am trying to have it understood as to what Mr. Keller is proceeding upon.

Mr. GRAHAM. Have you found that extract from the letter?

Mr. RALSTON. Mr. Keller's answer to the question is on page 8 of his letter:

I respectfully call your attention to the fact that the only matter now properly before your committee is whether or not the specifications of my charges against Attorney General Harry M. Daugherty annexed hereto are grave enough and constitute a prima facie case that will warrant your committee in recommending favorably to the House of Representatives my resolution (H. Res. 425) which authorizes and directs your committee to inquire into the official conduct of the said Harry M. Daugherty, Attorney General of the United States, and to report to the House whether, in your opinion, the said Harry M. Daugherty has been guilty of any acts which, in contemplation of the Constitution, are high crimes or misdemeanors, requiring the interposition of the constitutional powers of the House; and giving your committee power to send for persons and papers and to administer the customary oaths to witnesses.

The CHAIRMAN. That is simply saying the same thing, if you will pardon me——

Mr. GRAHAM. Mr. Chairman, will you allow me a moment? I asked that question with the view of asking another question. What do you mean by that, Mr. Keller? You say you take your stand on that. What do you mean by taking your stand on that? I ask you the question, Mr. Keller.

Mr. KELLER. What is the question?

Mr. GRAHAM. The portion of the letter to which you refer and upon which you said you would take your stand, and that there you would stand, has been read; and now I ask you what you mean by taking your stand on that statement from the letter?

Mr. KELLER. That I have presented everything that I think is necessary for the committee to determine whether that resolution should be passed or not.

Mr. GRAHAM. In other words, that you consider you will not proceed any further unless the committee acts on the resolution?

Mr. KELLER. Absolutely.

Mr. GRAHAM. That is your stand?

Mr. KELLER. That is my stand; yes, sir.

Mr. GRAHAM. That is all I have to ask.

The CHAIRMAN. Are you aware of the fact that this matter has been presented to us and we have the power to make an examination now?

Mr. KELLER. The Saturday when I appeared before you previously I was informed by you, Mr. Chairman, that you had no right to subpoena any witnesses and no right to subpoena any papers for any hearings.

The CHAIRMAN. Under the statute we have the right to swear witnesses and we have the right to call for them, if they will come voluntarily.

Mr. KELLER. That is just the point.

The CHAIRMAN. We have that right, and the Attorney General has written a letter to this committee saying that he will furnish any information that we ask for. Now, in view of that, we are asked to go on and investigate this matter to determine whether there is a prima facie necessity for this investigation, and that is why the matter was sent here; and still you insist your bare statement is sufficient. That was not sufficient in the House, so why should we take it as sufficient now? We are proceeding just as the committee proceeded in the Wilfley case. A motion was made in that case, charges were presented, just as you did, and when it was considered in the House they refused to pass the resolution, but sent it to the Committee on the Judiciary with the request that the committee make a preliminary examination. You know, Mr. Keller, that it is a common thing, and always has been, to hold hearings for the purpose of determining whether a bill or resolution should be reported. We are simply acting in accordance with the ordinary custom in these matters, and I do not see why you should undertake to say that we have got to do a thing that perhaps is absolutely unnecessary. Whenever you show there is any necessity for subpoenaing witnesses we will take the necessary steps for the purpose of getting them.



Mr. KELLER. But you have no right, as you say, to subpoena witnesses.

The CHAIRMAN. But as long as we can get them we have a perfect right to hear them, and if you show there is any necessity for a subpoena, then it is time for you to ask for one. Up to date you have shown no necessity for one.

Mr. KELLER. Mr. Chairman, in the brief——

The CHAIRMAN. You do not show——

Mr. KELLER (interposing). Let me answer just a minute. I simply want to answer you. There are some specific statements, and the evidence to substantiate them is in writing. For instance, the Attorney General refusing to prosecute corporations or individuals who violated the antitrust laws which the Federal Trade Commission reported to him, and where their own evidence before the Federal Trade Commission points out that they have violated the law, and yet he has practically refused to prosecute. That is enough evidence, it seems to me.

The CHAIRMAN. Suppose you tell us what witnesses you want; you have got to do that when you get a subpoena anyway.

Mr. KELLER. Mr. Chairman——

The CHAIRMAN (continuing). Whenever you find we can not get the witnesses, then the situation is different.

Mr. FOSTER. Is it your notion at this time that this committee does not have authority to go ahead and swear whatever witnesses may be tendered or voluntarily come upon your request; that at this time the committee does not have authority to go ahead and do that for the purpose of trying to ascertain whether there is a prima facie case? As I understand it, that is the question before us, and do you claim we do not have that authority?

Mr. KELLER. No; I understood the chairman to say that he has no right to subpoena witnesses.

Mr. FOSTER. I did not say "subpoena," but is it your understanding that this committee at this time does have authority to go ahead and determine under this resolution before the committee whether or not there is a prima facie case based on the power of the committee to swear whatever witnesses may be tendered or come here upon your request. Do you think we have that authority to proceed at any time?

Mr. KELLER. The understanding I had when I appeared here one Saturday last September—I was practically told then, as I understood it, that you had no authority to swear or subpoena any witnesses.

Mr. FOSTER. I am not talking about subpoenaing witnesses but swearing them. I take it there is no question but what the chairman, under the statute, has authority to swear witnesses. I just wanted to get your notion at this time of the authority of this committee. We are under the notion we have authority both by law and by precedent to swear witnesses for the purpose of ascertaining whether or not there is a prima facie case. Conceding we have, perhaps, no authority to subpoena witnesses, we do have power to swear whatever witnesses may be tendered, and we have a statement from the Attorney General to the committee that his department will furnish anything the committee may want that is covered by your specifications

Mr. KELLER. But you realize in proceedings of this kind there will be many unwilling witnesses, and probably just those we want we could not get to come.

Mr. FOSTER. I did not ask the question to embarrass anybody but simply to get your notion as to the authority of the committee in the premises.

Mr. RALSTON. Does not the committee settle that for itself?

Mr. FOSTER. I was trying to find out whether his position was taken because he disagreed with the committee's notion.

Mr. RALSTON. It does not occur to me that his notion would rule on that proposition. The committee will determine its own power. If the committee desires to proceed—if that is the determination of the committee, to proceed now to the taking of testimony, then we will submit some names for immediate action and bring the matter to a test.

Mr. THOMAS. Mr. Chairman, as I understand it, you say this committee has not authority to subpoena witnesses. Is that your position?

The CHAIRMAN. I think that is correct.

Mr. THOMAS. If that be true, why should this committee object to asking the House for authority to subpoena witnesses so that we might proceed to hear this case?

The CHAIRMAN. This committee will ask for authority whenever there is any necessity for it, but up to date there has been nothing shown to indicate there is any need of our going to the House for that power. The Attorney General has said that he is willing to assist in furnishing information. We constantly send for persons in the different departments, and so far I do not know of any instance in which a person has been refused where we have asked for him. Unless you have got some testimony outside of the department and away from town——

Mr. THOMAS (interposing). How would it hurt this case——

The CHAIRMAN (continuing). There is not any necessity of pursuing a procedure of that kind. We are simply proceeding in the usual, ordinary way, such as has been followed in years past in these investigations, and I can not see why you should refuse to give us the names of your witnesses. You would have to give them, anyway, if we subpoenaed them, and I do not see why you should refuse to give us the names and allow us to get the men for you if you need them.

Mr. SUMNERS. Mr. Chairman, as I understand it——

The CHAIRMAN (continuing). We are not trying to prevent this investigation, but in the interest of economy and orderly proceedings we have some right to control this proceeding. If you will show there is any necessity for a subpoena, we will go to the House and get the authority.

Mr. THOMAS. Then why not control it so as to have the authority, and if necessary use it to bring unwilling witnesses before this committee?

The CHAIRMAN. It has not been shown by anybody up to date that there are any unwilling witnesses.

Mr. RALSTON. Mr. Chairman——

Mr. SUMNERS (interposing). I was just going to add this: As I understand the position of these gentlemen, it is that this committee

is undertaking to do an inquisitorial act without all the power that inquisitorial bodies usually possess, namely, to bring witnesses who are unwilling, and an unwilling witness is generally the best witness. I understand that to be their position, and personally I am rather impressed with the wisdom of that position.

Mr. RALSTON. If I understand the position of the committee, is this—confirming, perhaps, in a sense, the remark just made—that the committee feels it has power to swear witnesses.

The CHAIRMAN. There is no question about that.

Mr. RALSTON. But the committee does not believe it has power to enforce attendance. It seems to me that the committee, if I may infer—is going to proceed, if you will allow me to say so, in a halting way, because you are not going to go very far until you find you have got to have emphatic power from the House to enforce the attendance of witnesses. I am prepared to give some half-dozen names at this moment. You can test it out, if you please, and see whether they come willingly or whether they refuse to come, and if they refuse or fail to come, then you can go to the House. It seems to us an absurd way of doing, if you will allow me to say so, but it is for the committee to determine.

Mr. FOSTER. Do you take into consideration, in connection with that statement, the fact that this committee heretofore under analogous conditions, has been able to investigate a prima facie case, and is not the gentleman assuming that the usual and customary procedure will not produce results here.

Mr. RALSTON. If you will permit me to differ as to one expression which you have used—an analogous case—we do not admit that this is an analogous case. It is very much as is sometimes said by lawyers, that there are no two law cases that are exactly alike.

The CHAIRMAN. It is an analogous proceeding, if you will pardon me.

Mr. RALSTON. It may be an analogous proceeding, but the circumstances surrounding it may be entirely different.

Mr. FOSTER. Should we anticipate that there is a difference when the rule is established and when we are simply investigating to ascertain whether there is a prima facie case?

Mr. RALSTON. I do not know the circumstances of the particular case which has been alluded to, but I can conceive here that there are a lot of documents, ordinarily confidential, which must be called for; that there are a lot of witnesses who are subject to the power of the very defendant, if I may so term him in this proceeding; and that there are certain circumstances surrounding this case which will compel this committee to have the fullest power in its hands before it can effectively prosecute this impeachment case.

Mr. FOSTER. Should not the committee have the power to determine that rather than the proponent.

Mr. RALSTON. The committee has absolute power to do a wise or a foolish thing.

Mr. FOSTER. Yes.

Mr. RALSTON. Yes.

Mr. FOSTER. And you think it is foolish if the committee should proceed along the customary lines and ask Mr. Keller whether he is willing to proceed along those lines until an emergency develops?

Mr. RALSTON. I hope you will pardon me if my expression seems at all critical.

Mr. FOSTER. I was not referring to its being critical, but I did not know in what way you classified the proceeding.

Mr. RALSTON. I think it is a mistaken policy under the circumstances of this case. I think one can readily realize that. Consider the number of issues that there are in this case. The res is the conduct of Burns. There is one issue that calls for one set of testimony.

Mr. GRAHAM. He is not under impeachment. Is he under impeachment?

Mr. RALSTON. No; but his conduct being brought directly home to Mr. Daugherty, with full knowledge of his transgressions against law, against decency, against the liberties of the people, Mr. Daugherty appointed him to office. Now, that, as I say, is one very distinct issue. Another is the conduct of subordinates of the department, let us say, in Illinois. Another may be the conduct of Mr. Daugherty in his relations with Mr. Felder. Another may be his conduct with relation to the enforcement of laws affecting safety appliances throughout the United States; laws which have not been enforced under Mr. Daugherty, and as the result of that nonenforcement there has been almost scores of deaths and injuries. There is all this variation of questions.

Mr. CHRISTOPHERSON. If this committee secures authority from the House to subpoena witnesses, are there any other objections to proceeding to submit testimony?

Mr. RALSTON. It is absolutely with the committee.

Mr. CHRISTOPHERSON. Will you and Mr. Keller be ready to submit your testimony assuming the committee assumes that authority?

Mr. RALSTON. If the committee assumes that authority it will be our duty to submit testimony, and we should expect to do it.

Mr. CHRISTOPHERSON. Then the only objection you raise is about our authority to proceed.

The CHAIRMAN. Are you ready to present your testimony to-day?

Mr. RALSTON. I would not be prepared to proceed to-day, because the committee has not informed us that we were to proceed with the taking of testimony to-day, and naturally we are not prepared.

Mr. MICHENER. When will you be ready to proceed?

Mr. KELLER. You mean after the House has passed the resolution? We will be ready any time you say, if you get the proper authority by having the House pass this resolution.

Mr. CHRISTOPHERSON. Do you mean the resolution must be passed before you will submit any testimony?

Mr. RALSTON. We mean we can not go a day without the authority of the resolution.

Mr. CHRISTOPHERSON. Suppose the committee gets authority to subpoena any witnesses you desire, will you then be ready to submit testimony in substantiation of your charges?

Mr. KELLER. Within a reasonable time—next week.

Mr. BOIES. As soon as we can subpoena the witnesses?

Mr. KELLER. Yes, sir.

Mr. TILLMAN. Mr. Keller, you have stated emphatically a time, or two that you would prefer not to proceed unless the House passes the resolution that has been suggested. Now, let me ask you this question: I think this investigation should proceed, and I should think that Attorney General Daugherty would want it to proceed,

inasmuch as serious charges have been filed against him, and twice you have stated that you were ready to proceed after the passage of the resolution that has been suggested. Now, I want to ask you if you will not be ready to proceed if the committee goes to the House and secures from it authority to subpoena witnesses, with the authority to administer oaths, if the chairman does not already have that authority, and if you are not willing to abandon the position you took that you could not proceed with the investigation to the end in case we simply got authority from the House to subpoena witnesses?

Mr. KELLER. That is practically all the resolution does. It gives you that power to go ahead.

Mr. TILLMAN. Let us be clear on this proposition. Many of the committee think that we should investigate this resolution to determine whether or not it should be reported to the House with a request for its passage. Now, are you willing to abandon the position you took there so that we need not report this resolution but only go in before the House and get authority to subpoena witnesses?

Mr. KELLER. Yes; that is satisfactory.

Mr. MICHENER. With the assurance that the chairman of the committee has given you that the committee will go to the House and ask for that permission just as soon as the occasion arises, and considering further that when we met two months ago you stated that you would be ready with your proof at that time, and that you wanted to proceed, and in view of the fact that the matter was then adjourned with the express understanding stated—I know that I stated it, among others—that the case would be taken up at the first meeting after the new Congress convened, and that we would proceed with the investigation at that time. Now, with all those facts before you, and with the assurance of the committee that the committee will go to the House and ask for that authority if the occasion arises, what is there to prevent you from now proceeding? You must have some voluntary witnesses with whom to start the proceedings.

Mr. KELLER. We will be ready.

Mr. MICHENER. Then let us go on.

Mr. KELLER. That is the understanding.

Mr. RALSTON. Then it simply remains for you to fix the time for proceeding.

Mr. MICHENER. You were not here on the other occasion, but this morning was the time then set for this proceeding to progress.

Mr. KELLER. If the committee had not called upon me a few days ago by resolution to file a bill of particulars, I would have filed them to-day in the same manner as I have filed them upon the call of the committee. Therefore that would not change the situation at all.

Mr. MICHENER. Then you admit that you knew your first charges were not specific and did not contain proper information on which the committee could act.

Mr. KELLER. No, sir; it would not have been as complete as now, because you asked to have it prepared in a certain way and we have complied with your request.

Mr. MICHENER. Much was said in the newspapers, if I mistake not—and probably the gentleman was misquoted—in which we were criticized for not proceeding or for delaying the matter and not



going on with the hearing. I was one of those who was in favor of going on. I was then, am now, and expect to be in favor of going on with a full and free hearing, but the gentleman and his friends have seen fit to find fault with the committee because we have not gone on. Now we are here to-day ready to take up the matter, but you come in and say you are not ready. You say, "I am not ready; I intended to-day only to file written specifications, making the issue, which I admit I have not made before." Now, it does not seem to me that that—if you will pardon the expression—is acting in good faith with the members of the committee, who are in good faith and want to proceed with the hearing.

Mr. KELLER. The gentleman knows very well that at that time nothing was said about the witnesses. There was at that time a discussion about the filing of more specific charges.

Mr. FOSTER. Is it true that you are unable to proceed with any witnesses before this committee at this time?

Mr. RALSTON. That is undoubtedly true, but we will be ready to proceed on short notice.

Mr. FOSTER. Still, for two months the matter has been delayed.

Mr. RALSTON. I can not say anything, of course, with regard to that, because I was not here at the time.

Mr. YATES. Are you asking now for 30 days' delay?

Mr. RALSTON. No, sir; I have stated in reply to the chairman that we will be ready to proceed within a week, and that I thought we ought to proceed under the authority of a resolution of the House which will compel witnesses to come. If the committee thinks otherwise, I will give the committee now the names of four or five witnesses and we can test the matter out in this informal way.

Mr. FOSTER. Since the committee has had this matter virtually pending for a long time, is there any reason why you can not start now and put your witnesses on the stand?

Mr. RALSTON. Yes, sir; there is, because the witnesses are not here.

Mr. FOSTER. There is no question in my mind but what the committee will ask for whatever authority is necessary, but, in the meantime, are there not some witnesses who are willing to come in now and testify? In other words, can we not make a start this morning by taking the testimony of some witnesses who are willing to appear?

Mr. RALSTON. No, sir; it would be utterly impossible for us to proceed this morning.

Mr. FOSTER. I do not want this delay to be charged to the committee.

Mr. RALSTON. We are willing to be charged with two, three, four, or five days of delay.

Mr. TILLMAN. How many days do you want?

Mr. RALSTON. I would suggest the latter part of the week, or you could make it next Monday, if you prefer.

The CHAIRMAN. You have twenty-odd charges here, practically all of them depending upon whether, or not, the Attorney General has prosecuted certain matters in the department with proper diligence, and I presume those charges are very much the same.

Mr. RALSTON. I presume so.

The CHAIRMAN. Could you take them up on Thursday?

Mr. RALSTON. We have got to have one witness from Chicago and another from Cleveland on those propositions, and, perhaps, others from elsewhere.

Mr. CHRISTOPHERSON. Could you take that up on Thursday?

Mr. RALSTON. I will endeavor to take them up on Thursday, but whether we can do it effectively, or not, depends upon the passage by the House of the resolution that has been spoken of.

The CHAIRMAN. One of the witnesses is in Cleveland and one at Chicago?

Mr. RALSTON. Yes, sir; and I have no objection to giving their names. The Chicago witness is Mr. Donald R. Richberg, an attorney at law.

The CHAIRMAN. What is his address?

Mr. RALSTON. I do not remember his address, but that would easily reach him. He was here a week ago to-day.

Mr. MICHENER. Is he in Washington now?

Mr. RALSTON. No, sir. The other witness is Mr. Stevenson, and his first name I have not with me. He is a well-known and prominent lawyer, however, of Cleveland. I could not proceed with that charge without their presence.

Mr. MICHENER. Are they witnesses or attorneys?

Mr. RALSTON. They are witnesses. I have gotten information from them as witnesses. They are also attorneys, but not in this matter.

The CHAIRMAN. They are not Government employees?

Mr. RALSTON. No, sir.

The CHAIRMAN. Those witnesses would have to be subpoenaed before appearing on those charges?

Mr. RALSTON. I do not think they should be asked to come here except under subpoena.

The CHAIRMAN. Are they the only witnesses you have on this first charge?

Mr. RALSTON. They are the only ones that occur to me at this moment.

The CHAIRMAN. Then take the next specification: What do you know in regard to that?

Mr. RALSTON. I am not in a position to answer specifically those questions. I have answered as to those men because I know with reference to them, but as to many of these others, I do not know. I have come into this matter very recently, and my personal acquaintance with it extends only to three or four of those charges. As to the charges with which I am personally concerned, I am very free to give the names of the witnesses. They are Chief Justice Taft, to begin with; Mr. Wickersham, ex-Attorney General; Mr. Samuel Gompers, and Mr. Guy Oyster.

Mr. FOSTER. Mr. Gompers sent word to the committee that he would not be in the city this week.

Mr. RALSTON. He will be in the city on the 12th. He expects to be in town on the 12th.

Mr. MICHENER. Did he say he did not want these hearings to proceed until he was here?

Mr. RALSTON. I do not think he would undertake to delay the proceedings or to exercise any control over them.

Mr. GRAHAM. May I ask a question with reference to something you said a moment ago? You said that when this resolution was

passed you would be ready to proceed. Do you mean that, or are you willing to proceed if we have authority from the House to subpoena witnesses?

Mr. RALSTON. Personally, I am willing to proceed on the chance of their coming in, but I think we will be halted——

Mr. GRAHAM (interposing). That is not an answer to my question. Do you plant yourself on the resolution, or do you say that if the committee authorizes the chairman to get power from the House to subpoena witnesses you will be willing to go ahead?

Mr. RALSTON. I am willing to go ahead under any circumstances. but, as I have said, I feel that I can get no distance at all without that resolution being passed.

Mr. KELLER. I answered the gentleman over here by saying that I was willing to go ahead.

Mr. GRAHAM. But your counsel repeated that when the resolution was passed he would be ready.

Mr. KELLER. When the resolution is passed we will be ready. We want a resolution authorizing the committee to subpoena witnesses and get papers, so we can do business.

Mr. GRAHAM. There is nothing in the resolution except that power. Still I agree entirely with what you have stated as to the legal aspect of the case, as to the power of this committee and as to the controlling cases or precedents to which you have referred. I would suggest that the committee now go into executive session to determine this question that has been raised.

The CHAIRMAN. You say you will be ready on Thursday?

Mr. RALSTON. We could go some distance on Thursday, but I would not like to say that we could go on all day.

Mr. YATES. Before putting the question, I want to submit an observation: If Mr. Samuel Gompers is to come here and tell what he knows, of course, I will have no objection; but I want to give notice now that if he comes in here to tell what several hundred thousand men think and if we are going to be flooded with that sort of thing I am going to object.

Mr. THOMAS. Before he starts talking?

Mr. YATES. I will cross that bridge when I come to it.

Mr. MICHENER. Unless these witnesses are subpoenaed, they can not receive mileage from Chicago and Cleveland, and there will be no expense on the part of the Government unless they are subpoenaed. I presume that is one of the principal reasons why you want them subpoenaed, is it not?

Mr. RALSTON. I hardly think that the gentleman will insist upon that observation, but, I think if that were true, it would be entirely proper and commendable. It is not to be expected that they shall leave their business and come here without being compensated in the manner provided by law; but over and beyond all that, as any lawyer knows, his position with the court on any pending litigation is much stronger if he may say to the court, "I am under subpoena, and I must get excused. I must go."

Mr. MICHENER. I was prompted to make that observation by the fact that there was a willingness on the part of the committee to proceed with any witnesses that you might introduce, and with the further promise on the part of the committee, that if you would

present the names of the witnesses who were not here, and who would not come without subpoenas, we would have subpoenas for them. However, with that information before you, you still would not go on, and I could not see any reason for that unless it was on account of the pay part of it. I could not see any other reason why you did not introduce your voluntary witnesses, because you surely have some voluntary witnesses.

Mr. FOSTER. On Tuesday, of the week that Congress adjourned, it was contended that the committee ought to proceed, although we had the same lack of authority then as now, and, possibly, if we had started on that Tuesday, we might have been in the position of not being able to finish those charges.

Mr. RALSTON. I am sorry that I can not meet the gentleman on an equal footing in that regard.

Mr. FOSTER. I am simply apprising the gentleman of what occurred in his absence.

Mr. BIRD. On next Thursday, could you submit a substantial list of your witnesses?

Mr. RALSTON. I would not like to promise that, because I might expose some of the witnesses to a system of what we believe, at least, to be one of terrorism, extending all over the country.

Mr. FOSTER. Would you be in a position to feed your witnesses in so that they could be heard without loss of time?

Mr. RALSTON. Yes, sir; we would try to do that.

Mr. FOSTER. I would not want to have them subjected to that sort of thing. I was a prosecuting attorney myself for several years, and I realize the situation; but the point is, when we once start in, will you be in shape to feed in your witnesses right away, so as not to lose time?

Mr. RALSTON. I can only express my own feeling and my own hope in the matter.

Mr. BIRD. You could append other names to your list of witnesses at any time; but, in order to begin, and dispatch the business——

Mr. RALSTON (interposing). It would be my own desire to do that, because I have other things to do outside of appearing here, I would say with all respect to the committee.

Mr. MICHENER. Let us have your name.

Mr. RALSTON. Jackson H. Ralston.

Mr. MICHENER. You are a resident——

Mr. RALSTON (interposing). Of Washington.

Mr. MICHENER. What is your business?

Mr. RALSTON. I am supposed to be an attorney.

Mr. MICHENER. Whom do you represent?

Mr. RALSTON. In this particular I am appearing at the request of Mr. Keller.

Mr. MICHENER. You are the attorney for the American Federation of Labor also?

Mr. RALSTON. I am.

Mr. MICHENER. And of Mr. Gompers, personally?

Mr. RALSTON. Yes, sir.

Mr. KELLER. I suppose there will be no objection to the statement that there are several other attorneys who have offered to as-

sist in this matter, or in certain cases here, and who want to appear before the committee.

Mr. GRAHAM. My suggestion is to go into executive session to determine this question of securing authority to subpoena witnesses, so as to leave these gentlemen without excuse in the matter of proceeding when we meet again, and to determine the date on which we shall meet.

(Thereupon the committee went into executive session.)

#### AFTER THE EXECUTIVE SESSION.

The CHAIRMAN. We will go before the House and ask power to subpoena witnesses, to get papers and documents, and, also, authority to administer oaths, and sit during the sessions of the House. The hearings will commence on next Tuesday at 10 o'clock a. m.

Mr. RALSTON. Would it be premature, Mr. Chairman, to make any motion now, before you have that authority, as to the special documents we want called for?

The CHAIRMAN. My idea would be that you ought to give me the necessary information so I can get the subpoenas, if subpoenas are authorized. My understanding is that, under the law, the Speaker signs the subpoenas. They will probably be delivered to me as chairman of the committee, and then you will have to come here for the purpose of getting the subpoenas to have them served upon the people you want.

Mr. FOSTER. We suggested Tuesday, because you mentioned next week, and we did not fix the hearing for Monday because we thought it might be hard to get the witnesses here by Monday.

Mr. MICHENER. The committee was ready to go on next Thursday, but out of deference to your wishes, and since you had asked for further delay, we called the meeting for Tuesday. The committee wanted to be extremely fair and give you that additional time.

The CHAIRMAN. I want to say that after we commence taking testimony, the purpose is to go on and grind away from day to day as much as we can so as to finish the thing up.

(Thereupon the committee adjourned to meet on Tuesday, December 12, 1922, at 10 o'clock a. m.)

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#### HOUSE RESOLUTION 461.

On December 4 Mr. Volstead submitted to the House the following resolution; which was agreed to.

[67th Congress, fourth session. H. Res. 461.]

IN THE HOUSE OF REPRESENTATIVES,

*December 4, 1922.*

#### RESOLUTION.

*Resolved*, That in the consideration of House Resolution 425 the Comm<sup>tee</sup> on the Judiciary be authorized to send for persons and papers and administer oaths to witnesses, and to sit during session of the



COMMITTEE ON THE JUDICIARY.

HOUSE OF REPRESENTATIVES.

SIXTY-SEVENTH CONGRESS.

ANDREW J. VOLSTEAD, Minnesota, *Chairman*.

GEORGE S. GRAHAM, Pennsylvania.

LEONIDAS C. DYER, Missouri.

DAVID G. CLASSON, Wisconsin.

W. D. BOIES, Iowa.

CHARLES A. CHRISTOPHERSON, South Dakota.

RICHARD YATES, Illinois.

WELLS GOODYKOONTZ, West Virginia.

IRA G. HERSEY, Maine.

WALTER M. CHANDLER, New York.

ISRAEL M. FOSTER, Ohio.

EARL C. MICHENER, Michigan.

ANDREW J. HICKEY, Indiana.

RICHARD E. BIRD, Kansas.

ALBERT W. JEFFERIS, Nebraska.

ROBERT Y. THOMAS, Jr., Kentucky.

HATTON W. SUMNERS, Texas.

ANDREW J. MONTAGUE, Virginia.

JAMES W. WISE, Georgia.

JOHN N. TILLMAN, Arkansas.

FRED H. DOMINICK, South Carolina.

GUILFORD S. JAMESON, *Clerk*.

W. N. STREETER, *Assistant Clerk*.

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CHARGES OF HON. OSCAR E. KELLER AGAINST THE  
ATTORNEY GENERAL OF THE UNITED STATES.

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SERIAL 41, PART 2.

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COMMITTEE ON THE JUDICIARY,  
HOUSE OF REPRESENTATIVES,  
*Tuesday, December 12, 1922.*

The committee met at 10 o'clock a. m., Hon. Andrew J. Volstead (chairman) presiding.

The CHAIRMAN. We have a quorum present. Mr. Keller, we are ready to take up the charges in the order in which they were filed.

ORDER OF PROCEEDING ON SPECIFICATIONS.

Mr. KELLER. I am ready, and one of my attorneys here this morning, Mr. Ralston, will represent me to-day in this matter.

Mr. RALSTON. Mr. Chairman, purely as a matter of information, I would like to inquire if Mr. Daugherty is represented here by counsel.

The CHAIRMAN. There has been no formal entry of any.

Mr. HOWLAND. Mr. Chairman and gentlemen of the committee, I appear, Mr. Howland, of Cleveland, as the personal attorney of the Attorney General. Mr. Seymour, of the department, appears here as a representative of the Department of Justice.

Mr. FOSTER. Mr. Howland, you used to be a member of this committee, did you not, in years gone by?

Mr. HOWLAND. I had the honor, Mr. Chairman, as you well know, being a member of this committee, to be in the Sixty-first and Sixty-second Congresses. Now, one good turn deserves another, Mr. Chairman. I notice from the report, Serial No. 41, of the hearings of December 4, that the gentleman from Minnesota, Mr. Keller, page 94 of serial 41, House Resolution 425, of the report of the hearings said to the committee:

Mr. KELLER. Well, Mr. Chairman, I have complied with the wishes of the committee and filed a bill of particulars as you requested. Those were prepared by men who are interested in this impeachment proceeding with me \* \* \*

I now respectfully ask the committee to ask who these gentlemen are—associated with Mr. Keller in this impeachment proceeding.

Mr. RALSTON. Mr. Chairman, for the issues that are before this committee, the gentleman will pardon me for saying that the question is entirely impertinent. The only issue before this committee is the one of the innocence of his client.

The CHAIRMAN. Do you refuse to answer the question?

Mr. RALSTON. It is not a question before this committee.

Mr. HOWLAND. It is now; I have put it before the committee.

Mr. RALSTON. It is not before the committee unless it is pertinent.

Mr. HOWLAND. Very good.

Mr. JEFFERIS. Can you not state briefly, the parties interested in this?

Mr. RALSTON. I can state briefly, yes; the parties interested in it. I can not, naturally, enumerate them. They are something over 100,000,000 in number.

Mr. FOSTER. Did they help prepare this? This says, "those were prepared by men who are interested in this impeachment proceeding with me."

Mr. RALSTON. His clerk's assistance, I suppose, he has a right to get with or without compensation.

Mr. FOSTER. I do not refer to that; I refer to the statement made by Mr. Keller. It is up to you whether you care to give that information. It says, "those were prepared by men who are interested in this impeachment proceeding with me," and his question was whether you cared to state who they were.

Mr. RALSTON. If the committee votes that is a pertinent inquiry, that it has anything to do with the issues before this committee, I will answer it as far as is within my power.

Mr. JEFFERIS. Do you not think, in order to see whether this is a prosecution in good faith or not, that the committee and the country would like to know whether it has animus behind it; and you can tell that, possibly, by knowing who the individuals are who helped to prepare this.

Mr. RALSTON. The question of whether this is in good faith or bad faith depends upon the facts which will be developed here. If Mr. Daugherty intends to rest his defense upon the good faith or bad faith of his accusers, he is at perfect liberty to do so.

Mr. JEFFERIS. It is not what Mr. Daugherty intends; it has got beyond Mr. Daugherty. This is a matter of national importance, and the people are interested, as I view it, in knowing whether or not they will continue to have confidence in their Government, or will not.

Mr. RALSTON. The people are interested in knowing whether or not the facts we put forth are true.

Mr. Keller filed these charges last September, I believe. Now, Mr. Keller has gotten assistance from many sources since then and expects to get assistance from many sources in the future which will tend to support these charges. Now, Mr. Keller, on his oath as a Member of Congress, filed the charges.

Mr. JEFFERIS. Suppose we grant that. What is there, what reason is there, that you could not or would not be willing to state the men who have helped to prepare these charges?

Mr. RALSTON. I have no personal objection to it at all, except its utter impertinence and, if I could copy an expression used by Mr. Daugherty, an attempt on his part to create a smoke screen before this committee.

The CHAIRMAN. Oh, I do not think so——

Mr. RALSTON. I think so, absolutely.

Mr. CHANDLER. Is that seeking to create a smoke screen, when he is not seeking to suppress the names of his prosecutors?

Mr. RALSTON. I am not seeking to suppress any names. If the committee rules that is pertinent to the question, I will answer.

Mr. CHANDLER. It certainly is.

Mr. RALSTON. It seems to me it is entirely impertinent.

The CHAIRMAN. I do not think that it is an impertinent question. It is one which is asked in courts in the trial of cases.

Mr. RALSTON. I have never known of its being asked in the trial of a criminal case before in my experience.

The CHAIRMAN. It is involved in nearly every case.

Mr. RALSTON. It is always involved, yes, if there is no other defense, which appears to be the case here, so far.

The CHAIRMAN. Go on and answer the question.

Mr. RALSTON. If the chairman rules it is pertinent——

The CHAIRMAN. I rule it is pertinent.

Mr. RALSTON. I consider it is a smoke screen. However, Mr. Keller has had my assistance; he has had the assistance of his secretary, I have no doubt. Whether he has had other assistance in the presentation of this thing—there are two secretaries—but whether he has had other assistance in the preparation of this thing, I do not know.

Mr. HICKEY. Have you any objection to stating who compensates you for your services?

Mr. RALSTON. I was asked to prepare those without any question of compensation.

Mr. HICKEY. By whom?

Mr. RALSTON. I was asked, so far as the particular issues he is acquainted with are concerned, by Mr. Gompers, and no question was raised as to compensation.

Mr. HICKEY. Mr. Gompers is president of the American Federation of Labor?

Mr. RALSTON. Yes, he is; he is also an American citizen.

Mr. HICKEY. And you are attorney for the American Federation of Labor?

Mr. RALSTON. Yes; I have been on many occasions.

Mr. HICKEY. So that you really appear for this organization at this time?

Mr. RALSTON. If you choose to draw that inference, of course, I can not help it. I am appearing for Mr. Keller.

Mr. FOSTER. Just a moment. Since the chairman has ruled it is a pertinent question, the sentence is, "Those were prepared by men who are interested in this impeachment proceeding with me, and certain lawyers and attorneys in briefing it." Do you care to go ahead and mention the lawyers or attorneys? I am not pressing it; I am just calling your attention to the fact that that is the rest of that sentence, in order that you may complete your answer if you so desire.

Mr. RALSTON. Yes. I was trying to think if I knew of any lawyer. It may be Mr. Untermeyer prepared some of the charges; I do not know. I have not had any communication with him about it. I prepared, in the rough, at least three of the charges.

Mr. FOSTER. I only mentioned that in view of the chairman's ruling.

Mr. RALSTON. Yes. I do not know of any other lawyers.

Well, if we have cleared away this immaterial matter, if the chairman pleases, may I ask whether our subpoenas were all served?

The CHAIRMAN. They have been served. A subpoena was issued and served on Gompers, Oyster, and Finch. I saw the Chief Justice and he said that so far as he is concerned he is willing to come at any time we call for him. I did not have the subpoena issued for him because I did not think it was necessary. We issued a subpoena for Mr. Stevenson and wired him according to your letter. We have issued a subpoena for Wickersham, and the arrangement is, he will be here whenever we want him.

Mr. RALSTON. May I also ask the committee this, while I have the opportunity, in connection with, I think it is, the fourth charge, that affecting the administration of safety appliance and inspection laws of the United States, that subpoenas may issue for Mr. McChord, chairman of the Interstate Commerce Commission, and Mr. Oscar J. Horn, of Cleveland, Engineer's Building, Cleveland, Ohio, attorney for the locomotive engineers of the country.

The CHAIRMAN. That is a matter for future consideration. We notified you, I believe, that we would take up these charges in the order in which they were filed. Now, are you ready to proceed with those charges in that order?

Mr. RALSTON. I am not. I desire to submit, in that connection, my answer to Mr. Volstead upon that proposition.

The CHAIRMAN. It is the right of the committee to determine the order of its proceedings.

Mr. RALSTON. Then I have respectfully to request——

The CHAIRMAN. Let me ask: What excuse have you for not putting in the evidence in the order we asked for it?

Mr. RALSTON. We are simply not prepared to do so, as the chairman must have known when he made that request——

The CHAIRMAN. Why are you not prepared to do it?

Mr. RALSTON. Because it is an absurd request, if you want to know it.

The CHAIRMAN. We have to determine that for ourselves. Every committee of this kind determines its procedure and we have given you ample notice that the charges we want taken up in that order, unless you have a good excuse for not doing so. If you have, the committee is willing to listen to your reason.

Mr. RALSTON. I do not put it as an excuse, but I have to say to the chairman and the members of the committee that such a proposition, in committee practice and in law, is absolutely without precedent.

The CHAIRMAN. No; it is nothing of the kind. Every committee that has made an investigation of this kind has controlled its own procedure, so far as I know.

Mr. RALSTON. I think it is yet to be determined that the judge tells the prosecutor he must present his case in any particular order.

The CHAIRMAN. You have a number of separate charges here.

Mr. RALSTON. Yes.

The CHAIRMAN. You filed them and elected to put them in a certain order yourselves, and you say that the charges which are first in this bill are the most important.

Mr. RALSTON. I did not; I beg your pardon.

The CHAIRMAN. That is Mr. Keller's statement, if I remember the record correctly. We would like to get at this thing. This is the third day we have called for evidence and up to date we have not been able to get a scintilla of evidence upon any of these charges.

Mr. RALSTON. This is the first day——

The CHAIRMAN. Oh, no.

Mr. RALSTON. I beg your pardon; let me complete my sentence. This is the first day that the committee has ever issued and had returnable a single subpoena.

The CHAIRMAN. The record will show, when the charges were first made, Mr. Keller stated he was ready to produce testimony. I met him on that day and he requested me for a hearing. I immediately arranged with him, without any opposition on his part, for a hearing about these charges. The time arrived; we were here; we tried to get something out of him. We did not get a word out of him in the nature of evidence. We met again last Monday and we asked for evidence then, and we were simply stalled off again without getting anything.

We served upon you a notice on the fifth day after we met, telling you that we would take up these charges in the order in which you had filed them. Now you refuse to do that, as I understand it?

Mr. RALSTON. We do. You have witnesses ready to proceed upon a distinct charge. The fact that it is given a particular number is purely an advantageous circumstance.

The CHAIRMAN. In all of these first charges, that is, the charges under the first specification, you allege that the Attorney General has refused to prosecute?

Mr. RALSTON. Yes.

The CHAIRMAN. Now have you any witnesses anywhere upon that point?

Mr. RALSTON. Anywhere?

The CHAIRMAN. Have you any witnesses anywhere on the point that he has refused to prosecute, because it seems to me that those charges practically must rest upon that sort of an idea.

Mr. RALSTON. We think we have.

The CHAIRMAN. Well, who are they?

Mr. RALSTON. When we are prepared to put those charges in, I will be very glad to put in the names to the committee. We are not prepared to put in evidence on those charges this morning.

The CHAIRMAN. Why do you not give us the name at this time?



Mr. RALSTON. Mr. Chairman, the members of the committee, beyond all question, are honorable men; I would not suggest the shadow of a doubt on that. The very fact that they are honorable men and, as we hope, we are honorable men makes it difficult to deal with this situation. We have confronting us a most dishonorable man, on the other side, particularly in the person of W. J. Burns. We know the methods that he has adopted all over this country to defeat the ends of justice and to convict people wrongfully——

The CHAIRMAN. Stop right there. I can not understand for a moment why you are not willing to trust the committee with this information. There are not only Republicans but Democrats as well on this committee. Democrats who would be just as eager to find something against this administration as you could possibly be—I have the utmost confidence in their honesty; they have a right, and naturally can be expected to take advantage of anything that may be wrong in the Attorney General's office—and there is no reason I can think of why you should not trust this committee, made up as it is. This committee was not packed; this is not a special committee. Most of us have been on this committee for many years.

Mr. FOSTER. May I ask Mr. Ralston one question? I was reading the record of our previous meeting last night, and it seems when we met here some few months ago Mr. Keller's position was he had the evidence to present at any time, within a reasonable time.

Mr. RALSTON. Yes.

Mr. FOSTER. This committee, six days ago, by unanimous vote, voted to take the charges up in this order, because Mr. Keller, in his statement, said that if any one charge was more grave than the others, it was these antitrust cases which he placed first in the specifications. The committee six days ago, by unanimous vote, decided to take those up first, in absolute good faith, and you gentlemen were notified of that determination.

Now, two months ago Mr. Keller was ready to proceed, and we have fixed this date to-day, and the record shows that was agreeable to you. Now, after six days' notice, the committee is ready to proceed to take up that set of charges which Mr. Keller himself said were more important than the others, if there was any distinction, and it is not fair that the committee should ask you to proceed now to take the testimony to be given? Supposing you put it off for two weeks more, in connection with Mr. Burns, you would still be in the same position, would you not, and from whatever angle you consider that now, you would be in the same position then, and I submit to you if it is not fair with that unanimous decision arrived at six days ago, that we take up first the charge that Mr. Keller says is the most serious one, that we proceed with the testimony?

Mr. RALSTON. Mr. Keller is not a lawyer and, presumably, is not acquainted with legal ways. Mr. Keller has not and does not approach the thing from the standpoint of the lawyer; he can not be expected to do it. He did not take into consideration, and could not take into consideration, as to which charges the witnesses would be most readily available, and which could first be pressed. I think the committee will hardly want to take advantage of a stray expression of a man who is not himself a lawyer.

Mr. FOSTER. Will you pardon me in that connection. I am reading from page 104 and this occurred between you and I:

Mr. FOSTER. Since the committee has had this matter virtually pending for a long time, is there any reason why you can not start now and put your witnesses on the stand?

Mr. RALSTON. Yes, sir; there is, because the witnesses are not here.

Mr. FOSTER. There is no question in my mind but what the committee will ask for whatever authority is necessary, but, in the meantime, are there not some witnesses who are willing to come in now and testify? In other words, can not we make a start this morning by taking the testimony of some witnesses who are willing to appear?

Mr. RALSTON. No, sir; it would be utterly impossible for us to proceed this morning.

Mr. FOSTER. I do not want this delay to be charged to the committee.

Mr. RALSTON. We are willing to be charged with two, three, four, or five days of delay.

Mr. TILLMAN. How many days do you want?

Mr. RALSTON. I would suggest the latter part of the week, or you could make it next Monday, if you prefer.

That was in answer to a question by Mr. Tillman.

Mr. RALSTON. Yes.

Mr. FOSTER. Acting on that statement, the committee gave notice that we wished you to go ahead with the charges and to take up the most important first, and in doing that we were acting along the line suggested by you at the last hearing.

Mr. RALSTON. No; if you will pardon me. In the conversation you have read, you do not find one word from me about taking the charges up seriatum.

Mr. FOSTER. Oh, no; that is quite true.

Mr. RALSTON. On the other hand, at that very hearing I asked this committee to summon certain witnesses, having relation to a charge far down the line, and this committee, after some three or four or five appeals to it, did summon those witnesses for this morning, and presumably they are here, waiting, and the committee is, of course, at perfect liberty and can immediately proceed. If it does not want to proceed, if it proposes to set up an artificial barrier which we can not get over, it is for the committee to do so.

Mr. FOSTER. Just before you sit down: I see, immediately following where I read, where you gave the names of witnesses in Chicago and Cleveland, and you say:

We have got to have one witness from Chicago and another from Cleveland on those propositions—

“Those propositions”, referring to the 23 charges.

Mr. RALSTON. No; I do not think there can be any question about that.

Mr. FOSTER. Not to miss anything, I will start from where I read awhile ago and continue. [Reading:]

The CHAIRMAN. You have had twenty-odd charges here, practically all of them depending upon whether or not the Attorney General has prosecuted certain matters in his department with proper diligence, and I presume those charges are very much the same.

Mr. RALSTON. I presume so.

The CHAIRMAN. Could you take them up on Thursday?

Mr. RALSTON. We have got to have one witness from Chicago and another from Cleveland on those propositions, and, perhaps, others from elsewhere.

And you gave us those two names.

Mr. RALSTON. Yes, but I never used “those propositions” as relating to those first charges.

Mr. FOSTER. The chairman referred to the whole batch and you said "those propositions."

Mr. RALSTON. On the thirteenth and fourteenth propositions?

Mr. FOSTER. On the "twenty-odd" was the question put. That was what was before the committee and we assumed we were fitting in with your desires and Mr. Keller's desires, when he said those first were the most important charges to meet.

Mr. RALSTON. I can not for a moment deny what may have been the presumption of the committee, but the presumption was absolutely unfounded and mistaken, as is shown by the fact that five times I have asked Mr. Volstead to have summoned here——

The CHAIRMAN. Five times, since our last meeting, which was last Monday, and they have been subpoenaed.

Mr. RALSTON. Yes, and I requested them to be summoned clearly on the Burns charges.

The CHAIRMAN. You were notified. Mr. Ralston, at the same time, that the charges would be taken up in their order, and that the committee had voted to do that; a letter was written to you to that effect, which you acknowledged.

Mr. RALSTON. You are perfectly correct; and I told you that was, in my judgment, at least, unprecedented, and that I could not do it.

The CHAIRMAN. What reason have you——

Mr. RALSTON. I beg your pardon; let me complete my sentence—but, in the face of my statement that that could not be done, you summoned the witnesses for the later charge.

The CHAIRMAN. I did not consult with the members of the committee in reference to it; I simply summoned the witnesses.

Mr. RALSTON. After I told you I could not proceed under the committee's ruling.

Mr. FOSTER. If they decide this morning that you do not have to follow through and may go to the end of the first set of specifications, because of Burns's activity, will that be relieved by putting those specifications off one week or one month? Will you be in any less awkward position by putting them off for one month than you are to-day, so far as Burns is concerned?

Mr. RALSTON. I want to deal frankly with the committee. So far as those first charges are concerned, I do not expect to deal with them personally at all. I have not studied them; I did not prepare them, and Mr. Untermeyer is particularly interested in them, and, I presume, expects or hopes to appear before the committee. You will understand from that, that up to this time, the charges which I have particularly prepared myself, or aimed to prepare myself, are three in number.

Mr. FOSTER. Outside of those first specifications?

Mr. RALSTON. Having nothing to do with those earlier charges.

Mr. JEFFERIS. On what specifications are you ready to proceed?

Mr. RALSTON. I am ready to proceed with the specification affecting Mr. Burns. The next specification in which I am interested——

The CHAIRMAN. What numbers are they?

Mr. RALSTON. Thirteen, is it not?

Mr. HICKEY. When will you be prepared to proceed with the first charges?

Mr. RALSTON. I can not tell you; I did not prepare them.

Mr. HICKEY. I understand, but I thought likely you had some information from those who did prepare them.

Mr. RALSTON. No.

The CHAIRMAN. Let me ask Mr. Keller.

Mr. KELLER. Mr. Chairman, and gentlemen of the committee, at the time we had the first hearing, when I appeared before the committee, you set the following Tuesday for me to appear before this committee with the attorney. I saw Mr. Untermeyer the following Sunday, and he is the man who is interested in those first charges.

The CHAIRMAN. What do you know about them yourself?

Mr. KELLER. I am not ready to state right now.

Mr. GRAHAM. You preferred these charges. Now, can not you produce the evidence that moved you to make these solemn and serious charges against a public official on the floor of Congress?

Mr. KELLER. I will be ready when I get ready.

Mr. GRAHAM. Oh, no you won't; do not get impudent with the committee.

Mr. KELLER. I say I am not prepared this morning to take them up. I am simply answering a question of Mr. Foster, and that is on the following Monday I said when I appeared before this committee, Mr. Untermeyer would have been ready on Tuesday to come here and answer these charges. This committee adjourned until December 4. Now, Mr. Untermeyer is in such shape that he can not appear at any particular time and take care of these particular charges.

Mr. GRAHAM. May I ask a question at this point? Mr. Keller, you say you consulted Mr. Untermeyer when?

Mr. KELLER. The first time was on a Sunday following the meeting on September 16.

Mr. GRAHAM. Who prepared these specifications?

Mr. KELLER. What specifications—these here?

Mr. GRAHAM. There are only one set of specifications here.

Mr. KELLER. Those specifications were prepared by myself and some assistants.

Mr. GRAHAM. By yourself?

Mr. KELLER. And some assistants.

Mr. GRAHAM. And some assistants. Who assisted you?

Mr. KELLER. I do not care to say this morning who all of those were.

Mr. GRAHAM. Why not?

Mr. KELLER. Why should I?

Mr. GRAHAM. Because you are asked, and the committee wants to know.

Mr. RALSTON. I must again object.

Mr. GRAHAM. Wait; pardon me; I am asking Mr. Keller as to who prepared those charges.

Mr. KELLER. I object to answering those questions just now, that is all.

Mr. GRAHAM. Wait a second; I want to ask you something else. Certainly before you made these serious accusations, you had some facts upon which to base those accusations. Now, why can not you produce the evidence of those facts this morning? This committee wants to get on.

Mr. KELLER. We are ready to proceed with the ones my attorney said we were ready to proceed with.

Mr. GRAHAM. Very well, but you are not to choose and limit the ones we are to proceed upon. These charges are filed, and, in their order, we have determined to proceed to hear them, and it is entirely up to us to say how we shall proceed, and we must proceed in an orderly manner.

Mr. KELLER. I could not say.

Mr. GRAHAM. I have asked you to produce the evidence you had at the time to file these charges against a high Cabinet officer of the United States.

Mr. KELLER. We are ready to start with No. 13.

Mr. GRAHAM. Why won't you put the evidence before this committee that moved you to file those charges?

Mr. KELLER. We are ready to proceed with the evidence under charge No. 13, now.

Mr. RALSTON. We are ready to proceed with No. 13.

Mr. GRAHAM. That is an evasion.

The CHAIRMAN. When are you going to be ready with those first charges?

Mr. RALSTON. I can not commit myself, Mr. Chairman, to any date, because those are not charges with which I find myself identified.

The CHAIRMAN. We ask you to be of assistance to this committee. We are charged with this investigation; you folks are not; you have no right to run this committee. It is our duty to investigate and determine what is to be done; and we have asked your assistance, and you are refusing to give it to us; that is the situation. And it does seem to me that, when you come in here and make an accusation of this kind, you ought at least to be frank enough to tell this committee what you have got, so that we can conduct the investigation. Now, if you do not want the press, or anybody outside to know who those witnesses are, we are perfectly willing to exclude everybody except the members of this committee; but this committee wants to go to work, instead of sitting around here week after week.

Mr. RALSTON. Mr. Chairman, when you go into court, do you ordinarily produce your list of witnesses to the court?

The CHAIRMAN. This is not a court; this committee combines the functions of a court and that of a prosecutor.

Mr. RALSTON. And a grand jury.

The CHAIRMAN. Yes; so far as that is concerned; and it has always been customary for the committee to control these things, and to bear the burden of the responsibility in seeking to get at the facts.

Mr. RALSTON. Mr. Chairman, in your control of the situation you have summoned certain witnesses, whom we are ready at this instant, without one word further of talk, to put on the stand to prove this allegation.

Mr. FOSTER. Are any of the witnesses whom you have asked to be subpoenaed to be examined in connection with the first charge in the investigation?

Mr. RALSTON. I think not.

Mr. FOSTER. Up to this time the committee has not been apprised as to what charge they are to be heard on. I took it from what you said a moment ago that they are to be heard in connection with the antitrust pro-



Mr. RALSTON. No; I think Mr. Volstead was perfectly informed as to that.

Mr. FOSTER. But could you or Mr. Keller indicate at this time how soon Mr. Untermeyer might be here to take care of specification No. 1? Is that not a fair and honest question?

Mr. RALSTON. It is absolutely fair, and if it is in my power and if I can——

Mr. FOSTER (interposing). I wonder if Mr. Keller would care to indicate how soon we could proceed to No. 1, if it was necessary to have Mr. Untermeyer here.

Mr. KELLER. I could not.

Mr. FOSTER. Does Mr. Untermeyer represent you in this charge?

Mr. KELLER. I do not know whether he does or not; he does in certain ones, and he was willing to appear before this committee on a date set in last September.

Mr. FOSTER. I want to ask you another question: Six days ago the committee decided to start on No. 1 this morning; from that time to this have you advised with Mr. Untermeyer to see whether he would be here this morning?

Mr. KELLER. Yes; he said he could not be here this morning.

Mr. FOSTER. And did he indicate when he could?

Mr. KELLER. No; he did not.

Mr. FOSTER. So that, so far as No. 1 is concerned, you have no idea when your attorney in the matter can be here?

Mr. KELLER. I have not.

Mr. THOMAS. Are you prepared to proceed on any of these specifications now?

Mr. KELLER. On No. 13.

Mr. THOMAS. Mr. Chairman, what objection could there be to his proposition?

Mr. RALSTON. We could do it at once.

The CHAIRMAN. The committee has unanimously decided to take up the charges in their order.

Mr. THOMAS. It was not so decided while I was here.

The CHAIRMAN. If you had been here, you would have been unanimous about it also.

Mr. THOMAS. I do not think I would.

The CHAIRMAN. Have you any witnesses on specification No. 2, Mr. Ralston?

Mr. RALSTON. To-day? No.

The CHAIRMAN. When will you be ready with No. 2?

Mr. THOMAS. He says he is ready on No. 13.

Mr. GRAHAM. That would be disorderly.

Mr. THOMAS. Why would it be disorderly?

Mr. GRAHAM. Because the committee has ordered otherwise.

Mr. THOMAS. Why did you order otherwise? I did not join in that.

Mr. GRAHAM. Well, you are only one member of the committee, and the other 20 decided that way.

Mr. THOMAS. I doubt whether there were 20 of us here at the time.

Mr. GRAHAM. You are a doubting Thomas. [Laughter.]

Mr. RALSTON. I can shorten this argument and answer your question by saying that this morning we are ready to proceed on No. 13, and we are not to proceed on any other.

The CHAIRMAN. Well, we want to know about these others.

Mr. SUMNERS. It looks to me, Mr. Chairman, if I may be pardoned for interposing, that it is pretty clear that these gentlemen are not ready to proceed on any charge except No. 13, and do not know when they will be prepared to proceed on the first charge.

The CHAIRMAN. I want to ask him something in regard to these other charges. Now, as to specification No. 2: When will you be ready to be heard on that?

Mr. RALSTON. I will have to say that we are not ready on that.

The CHAIRMAN. When can you be ready on that?

Mr. RALSTON. I take it that that is a matter which Mr. Untermeyer has particularly in charge, and I can not give any further answer than has already been given.

The CHAIRMAN. Do you know of any witnesses in No. 2?

Mr. RALSTON. I do not, because I have paid no attention to it.

The CHAIRMAN. How about No. 3?

Mr. KELLER. That is a similar one.

Mr. RALSTON. Yes; I will make the same answer as to No. 3.

The CHAIRMAN. How about No. 4?

Mr. RALSTON. No. 4 we are ready to proceed on to-morrow morning. I have already asked that two witnesses be summoned in that.

The CHAIRMAN. You are not ready to-day on No. 4?

Mr. RALSTON. Not to-day, because we have these other matters which will surely take us to-day.

Mr. FOSTER. May I ask, Mr. Chairman, if the clerk got the names of those two witnesses on No. 4? He said he gave us two witnesses on No. 4.

The CHAIRMAN. Who are they?

Mr. RALSTON. Judge McChord, chairman Interstate Commerce Commission; Mr. Oscar J. Horn, Engineers' Building, Cleveland, Ohio. He will come on a telegraphic subpoena.

Mr. FOSTER. With those two here you are ready to proceed to-morrow?

Mr. RALSTON. We are ready to proceed to-morrow.

The CHAIRMAN. What is McChord's full name?

Mr. RALSTON. Charles E., if I am correct.

The CHAIRMAN. And Horn, you say, is in Cleveland?

Mr. RALSTON. Yes; he is in Cleveland; but he will honor and obey a telegraphic subpoena.

Mr. FOSTER. What are his initials?

Mr. RALSTON. Oscar J.

The CHAIRMAN. How about No. 5?

Mr. RALSTON. That I am not ready to proceed on.

The CHAIRMAN. When will you be ready to proceed on that?

Mr. RALSTON. I am not prepared to answer that question; I would very willingly if I could.

Mr. GOODYKOONTZ. I suggest, Mr. Chairman, that you get the information from Mr. Keller, because he is the man that has been in touch with Mr. Untermeyer, whoever he may be; the man, as I infer, who wrote the specifications; and I suggest that you develop the facts from Mr. Keller as to when he is going to present the evidence on those specifications and get the names of the witnesses; so that we will not have to wait day after day, week after week, and perhaps month after month, as is the case with Tennyson's "Brook," forever. Let us develop the specifications.

The CHAIRMAN. How about specification No. 6?

Mr. RALSTON. That is a specification that I personally am familiar with.

The CHAIRMAN. Who knows anything about that one? Mr. Keller, do you know anything about No. 6?

Mr. KELLER. I am not ready on that.

The CHAIRMAN. When will you be ready to take that up?

Mr. KELLER. I could not say at this time, Mr. Chairman.

Mr. MICHENER. Well, who is representing you on No. 6? If you do not know, there must be somebody representing you who does.

Mr. KELLER. There probably will be.

The CHAIRMAN. Now, who is it?

Mr. KELLER. I do not know.

Mr. MICHENER. I take it that, as a Member of Congress, when you come in here and charge a man with a specific thing, you, at least, must have some idea who is going to represent you, and what you are going to try to prove in reference to that charge. Am I wrong in that conclusion?

Mr. KELLER. Well, the committee authorized me to have a lawyer and to have representation, and I will probably have three.

Mr. MICHENER. Yes; you have told us that at least a dozen times. And I was one of the members of the committee who said I want you to have an attorney—all the attorneys you want.

Mr. KELLER. Yes.

Mr. MICHENER. And I have been sitting here listening to all of that talk about getting a list of attorneys; and now you come in here with Mr. Ralston, and he does not know anything about it, and frankly says so, except as to two or three witnesses; he knows nothing about the rest of the charges. Now, it seems to me that in coming to this committee with a thing of that kind, you should at least be fair enough to the committee—if no one else has a list of attorneys or witnesses or knows when they will be here—to tell us about it.

Mr. KELLER. At this particular time I do not know when we will be prepared with No. 6.

Mr. MICHENER. Just one more question: Is the only reason, Mr. Ralston, why you did not want to proceed, that Mr. Untermeyer, some other attorney who will represent Mr. Keller in reference to these charges is not present, and you are ready to proceed with the charges where you represent him?

Mr. RALSTON. I am ready to proceed with the charges that I represent—not on all of them this morning.

The CHAIRMAN. I want to find out from these gentlemen, so that you will know, where we stand, because we notified you that we were ready to continue these hearings right along from day to day; and therefore I want to know what is on the calendar for tomorrow and the day after, because it will take some time to get these witnesses. Now, about No. 6——

Mr. RALSTON (interposing). No. 6 was the one you asked about before.

The CHAIRMAN. I am going to inquire a little further about No. 6. Can you give us the names of any witnesses in No. 6?

Mr. KELLER. Not this morning.

The CHAIRMAN. When can you give them?

Mr. KELLER. I can not say, Mr. Chairman.

Mr. BOIES. If you do not want to give them to us now, can you have them here the latter part of this week?

Mr. KELLER. Are you asking about No. 6?

The CHAIRMAN. I am asking about No. 6 now.

Mr. GRAHAM. Mr. Chairman, I would respectfully ask that Mr. Keller be called to the stand and sworn as a witness, and let the committee examine him as to the basis of these charges. We ought to have some light on these things, and to know what his reason is for preferring such charges as these, apparently knowing nothing about the facts.

Mr. KELLER. You may think so, Mr. Graham.

Mr. GRAHAM. Well, I have asked the chairman to have you sworn as a witness.

Mr. KELLER. Well, I am already sworn, Mr. Chairman, as a member of this House.

Mr. GRAHAM. I do not care whether you are sworn as a member of this House or not; you are a witness now, and the proponent of these charges.

Mr. RALSTON. I think we have a right, Mr. Chairman, to object respectfully to the statement made by Mr. Graham that Mr. Keller knows nothing about these charges. That is simply an assumption on the part of the member of the committee that ought not to be made at this stage of the hearing.

The CHAIRMAN. I am trying to find out just what he does know; and if he will give us the information, we will be very glad to have it. Because, in making these charges, he ought to be able to help this committee to make this investigation; and he ought not to try to run the committee, because we are the ones charged with the investigation; it is our duty to conduct it; we do not simply sit here as a court. We have got to find the facts, and we have got to be aided and assisted in some way where we do not know anything about the charges, because they are so indefinite that nobody can tell anything about what they mean. Of course, this specification now points out something; but we would like to know what evidence there is to substantiate any of these charges, so that we can send for the witnesses and get them here. You do not know anything about the witnesses in No. 6, Mr. Keller? Do you know who they are?

Mr. KELLER. Not at this time, Mr. Chairman.

The CHAIRMAN. Now, No. 7.

Mr. RALSTON. No. 7; I expect to present that the this committee; and the evidence in that case will be largely documentary. And I can give the committee the name of one witness, reserving the right to call such others as may seem appropriate.

The CHAIRMAN. What is the name of that witness?

Mr. RALSTON. Mr. Donald Richberg, attorney, of Chicago; and I may also call Colonel Easby-Smith, of Washington.

Mr. FOSTER. Well, do you want the committee to subpoena the one at Chicago? You can take care of the other.

Mr. RALSTON. The local one can be had, of course. And I may want to call other witnesses whose names I have not at this moment.

Mr. FOSTER. When will you be ready to proceed with that?

Mr. RALSTON. I take it that I shall be ready to proceed with that as soon as these other charges, the Burns charge—

CHARGES AGAINST THE ATTORNEY GENERAL.

Mr. FOSTER (interposing). That is No. 13.

Mr. RALSTON (continuing). And the railway inspection charges disposed of.

Mr. FOSTER. Then as soon as you are through with No. 13 No. 4?

Mr. RALSTON. Then I will be prepared with No. 7. I will say Mr. Chairman, that I always want to reserve the right of changing my mind, because I may be influenced by circumstances to take a different course. I tell you frankly what I now anticipate.

The CHAIRMAN. How about specification No. 8?

Mr. RALSTON. That I have nothing to do with.

The CHAIRMAN. Mr. Keller, what do you know about specification No. 8?

Mr. KELLER. We will be ready for those after we get through the others, the first three mentioned by Mr. Ralston.

The CHAIRMAN. What witnesses have you got on that?

Mr. KELLER. I do not know of any to-day that could be served.

Mr. YATES. He says that he does not know of any to-day.

Mr. JEFFERIS. Have you not had any witnesses in mind up to time?

Mr. KELLER. Yes, sir; and we are going to present those when we take up No. 8, the same as we are proceeding now.

Mr. JEFFERIS. Then you claim that you have witnesses, but will not reveal them now?

Mr. KELLER. We will proceed the way we are proceeding now on these charges.

Mr. JEFFERIS. On these specifications, as I understand it, you have given the committee some witnesses—this was before I came here—and they were subpoenaed. Now, if you have any witnesses on these charges, why can you not suggest them?

Mr. KELLER. Why do that now, when you know you are not going to send for them for several weeks?

The CHAIRMAN. We have got to know what we are doing, so we can have this matter considered; because, so far, we have nothing outside of three matters; and we might dispose of all those matters in the course of one or two days.

Mr. KELLER. When we get through with this, we can tell what we are going to do with the rest of them.

The CHAIRMAN. Well, that amounts to your refusing to give any information.

Mr. JEFFERIS. How long a program do you have for this hearing? How long do you figure you can keep the program going?

Mr. KELLER. Mr. Ralston can answer that.

Mr. JEFFERIS. You said several weeks; is that the length of the program?

Mr. KELLER. I do not know, as to several of the cases; some of the cases may take weeks themselves.

Mr. FOSTER. As I understand it, you have several witnesses and the only reason you fear to present them now is because you fear the activities of Mr. Burns; and the second is that you may want to change the order in which you will present them?

Mr. KELLER. Yes, sir.

Mr. FOSTER. You have them; but you refuse to present them for those reasons.



Mr. RALSTON. Several of them may take a week or two or longer.

Mr. FOSTER. Of course, that is within the province of the committee.

Mr. RALSTON. I am not speaking of the province of the committee at all; but I am speaking of what I think is likely.

The CHAIRMAN. The next is specification No. 9, how about that?

Mr. KELLER. I am not ready to go ahead on that.

The CHAIRMAN. What do you know about specification No. 9, Mr. Ralston? What witnesses have you on No. 9?

Mr. RALSTON. We can not supply them this morning.

The CHAIRMAN. Well, do you know of any?

Mr. RALSTON. I think I do; but I have never made a personal close study of that case, and I do not know that I will present them.

The CHAIRMAN. Mr. Keller, have you any witnesses in No. 9?

Mr. KELLER. Not this morning.

The CHAIRMAN. We all know that. The question is, whether you have any at all.

Mr. KELLER. I will have when I present the matter to the committee.

The CHAIRMAN. Have you any in mind now?

Mr. KELLER. No, I have not.

Mr. MONTAGUE. Have you any that you desire to have summoned?

Mr. KELLER. Not at this time.

Mr. MONTAGUE. Do you want to summon any witnesses on that line?

Mr. KELLER. We probably will, yes, sir.

Mr. MONTAGUE. When will you be ready to give the committee the names?

Mr. KELLER. On this particular charge?

Mr. MONTAGUE. The one that you spoke of just now—No. 9.

Mr. KELLER. I could not say just now.

The CHAIRMAN. How about No. 10?

Mr. RALSTON. No. 10 will fall particularly within the province of Mr. Frank Walsh.

Mr. MICHENER. He will be the attorney?

Mr. RALSTON. He will be the attorney to present that.

Mr. MICHENER. Mr. Ralston—or Mr. Keller—can you state at this time who your various attorneys are? Of course, if we are going to grant you the right of having attorneys we ought to know at the beginning who they are, to have you specify your attorneys; just like in a court; and the proper entries are then made on the other side. And I should like to have your attorneys named now, if the chair will permit—just who will appear as your attorneys. And not have a new attorney coming in every day; one attorney to-day, another to-morrow, and another the next day; but tell us who they are; and I, for my part, will urge that you be properly represented. Who are your attorneys?

Mr. KELLER. I will say that Mr. Untermeyer said——

Mr. MICHENER (interposing). I do not care what he said. I want to know who your attorneys are—I do not care about his conversation.

Mr. KELLER. I get to a point where we will want to take up a case where we find that that lawyer can not be here at that

Mr. MICHENER. Your attorney here will tell you how to handle that.

Mr. KELLER. And I may have to fall back on somebody else.

Mr. JEFFERIS. Mr. Keller, could you not first present to us what you need a lawyer for?

Mr. MICHENER. May I not have an answer to my question?

Mr. RALSTON. As my immediate assistant—I think the question is absolutely fair and proper—as my immediate assistant, I shall have the aid of Mr. Charles T. Clayton, a lawyer of this city. There are certain charges which I believe will be taken up—and we are expecting them to be taken up—by Mr. John H. Vahey, of Boston. Mr. Untermeyer's name you already have. Mr. Frank Walsh will take charge. I take it, of the specification which has recently been referred to.

Mr. JEFFERIS. No. 10?

Mr. RALSTON. Yes, sir. I think that is all—at least, so far as my knowledge goes.

The CHAIRMAN. What do you know about specification 11? Who will you be ready to take that up?

Mr. RALSTON. I expect Mr. Vahey to handle that.

The CHAIRMAN. Have you any witnesses on that?

Mr. RALSTON. I could not answer.

The CHAIRMAN. Mr. Keller, have you any witnesses in No. 11?

Mr. HOWLAND. I did not get that name.

Mr. FOSTER. Vahey, of Boston. Does Mr. Keller have any witnesses to-day on No. 11, or does he want to wait?

Mr. RALSTON. We have no witnesses on any charge except the charges specified.

The CHAIRMAN. How about No. 12? What have you got to say about that?

Mr. RALSTON. On specification No. 12, I have partly examined into the facts of that case; but without limiting myself as to the witnesses to be called in this case, I am dealing with a gentleman who ought to be thoroughly able to take care of himself, and I do not hesitate to give the name. Mr. Garnett, a lawyer of this city; his first name I have not with me at the moment.

Mr. FOSTER. He is a witness you want, as I understand?

Mr. RALSTON. Yes, sir. I will give his exact name at some later time. In saying this, I am thinking of subdivision No. 1.

The CHAIRMAN. Subdivision No. 1?

Mr. RALSTON. Yes; there seems to be several subdivisions.

The CHAIRMAN. How about subdivisions Nos. 2 and 3?

Mr. RALSTON. It may be that that charge will not be pressed.

Mr. HOWLAND. Well, this a good time to establish that now.

The CHAIRMAN. Do you mean that as to No. 3?

Mr. RALSTON. No, it may be that No. 2 will not be pressed; subdivision No. 2.

Mr. HOWLAND. If the committee please, if counsel are prepared to make that statement now, are we not entitled to have a dismissal entered, and not have this hanging over us at this time on that charge?

The CHAIRMAN. Personally, I would say not, the committee will consider in executive session what to do.

Mr. RALSTON. There would be nothing gained by that, because if we subsequently discovered that it ought to be pressed, we can present it to the committee.

Mr. GRAHAM. Well, you know there is a time, Mr. Ralston, when the presentation of additional charges must cease; you can not go on forever with them.

Mr. RALSTON. Yes, I understand that.

The CHAIRMAN. How about Specification No. 14?

Mr. RALSTON. On Specification No. 13, we are ready to proceed.

The CHAIRMAN. No. 14, I said?

Mr. RALSTON. Fourteen. Well, I shall not handle that, I do not expect to, at least.

The CHAIRMAN. Do you know anything about it?

Mr. RALSTON. Personally, I do not.

The CHAIRMAN. Do you know any of the witnesses?

Mr. RALSTON. No.

Mr. FOSTER. Who represents you in that, Mr. Keller—or do you care to say at the present time?

Mr. KELLER. I do not know.

Mr. GRAHAM. Well, have you any witnesses on that specification?

Mr. KELLER. Not this morning; no, sir.

Mr. GRAHAM. What?

Mr. RALSTON. There are no witnesses this morning.

Mr. GRAHAM. I did not hear you, Mr. Keller.

The CHAIRMAN. That is not the question. Do you know any witnesses covering any of those specifications in No. 14?

Mr. KELLER. Yes, I have a list of them.

The CHAIRMAN. Who are they?

Mr. KELLER. I am not prepared this morning to go into that charge.

Mr. GRAHAM. Do you mean you can not remember them?

Mr. KELLER. Yes, I can remember them.

Mr. GRAHAM. Then give them to the committee.

Mr. RALSTON. It is a charge, I understand, that Mr. Keller has to exercise care in giving the names of the witnesses in.

The CHAIRMAN. Do you not think this committee has a right to determine what is proper care under the circumstances? Is he the only one whose judgment is to be taken in a matter of this kind?

Mr. RALSTON. The committee has all the rights and all powers; but the question of the exercise of those powers is another question—or the exercise of those rights.

Mr. FOSTER. Mr. Chairman, may I ask Mr. Ralston one question, with your consent? I want to see if I am right about this: You are ready to go ahead with Nos. 13 and 14; is that correct?

Mr. RALSTON. We are ready to go ahead with No. 13 this morning.

Mr. FOSTER. Well, I mean can you follow that up with No. 4?

Mr. RALSTON. Yes.

Mr. FOSTER. And any of those three that you are ready to go along with, you can follow up with after finishing with the first?

Mr. RALSTON. No; I think before those charges are proceeded with—

Mr. FOSTER (interposing). I wanted to see if you are ready to go ahead and take them up in order.

Mr. RALSTON. Yes.

Mr. FOSTER. Now, if the committee should go ahead with No. 13, you think you would be ready immediately to proceed on those charges?

Mr. KELLER --

Mr. FOSTER --ly—and go ahead without any delay?

Mr. KELLER. Yes.

The CHAIRMAN. Would you be ready this week?

Mr. RALSTON. It would be a question of doubt whether he could proceed this week.

Mr. JEFFERIS. He said he was ready to go right along.

The CHAIRMAN. Some of the charges will not take as long as you think.

Mr. RALSTON. The committee can kill us off, of course, at once.

The CHAIRMAN. We have no disposition to do that, of course.

Mr. JEFFERIS. Mr. Chairman, so far as I am concerned, I want to have a full hearing on these matters; if there is anything wrong, I want to find it out; if there is not, the people of the country ought to know it, and ought not to be fooled along with all this talk and newspaper notoriety.

Mr. YATES. I understand, Mr. Chairman, that you asked the attorney when he would be ready. Mr. Keller, on the 16th of September, eight weeks ago, said that he was ready to proceed.

The CHAIRMAN. I notified Mr. Ralston that there was some question as to whether the thirteenth count states any impeachable offense at all, and my understanding is that the committee would like to hear arguments on that proposition.

Mr. GRAHAM. In executive session.

The CHAIRMAN. And in that case we will have it in executive session. The attorneys and Mr. Keller, of course, will be present.

Mr. MICHENER. Why executive session?

The CHAIRMAN. That is the decision of the committee. We do not need a stenographer for that.

Mr. JEFFERIS. I understand you want to hear argument on the matter as to whether or not this is an impeachable offense?

The CHAIRMAN. Yes.

Mr. JEFFERIS. Has the committee already determined that this would be decided in executive session?

The CHAIRMAN. Yes. All the testimony will be taken publicly. When there is nothing but arguments, then we deal with that in executive session. We ought to be free to discuss those things back and forth in executive session, just as we always do in matters of that kind.

Mr. JEFFERIS. Will Mr. Ralston make his argument in executive session?

The CHAIRMAN. Yes.

Mr. MICHENER. Mr. Chairman, when was that action taken——

Mr. GRAHAM (interposing). I move that we go into executive session.

Mr. RALSTON. I want to try to show courtesy to the committee under all circumstances, and treat the committee with every respect and do everything I can for it, and I am honestly trying to get a fair conclusion; but this thing should be done in the open.

The CHAIRMAN. A law argument does not need to be in the open and does not need to be heard in the presence of anybody except the committee.

Mr. RALSTON. That may be, now, but I am going to say frankly that I shall decline to make an argument in executive session.

Mr. FOSTER. Mr. Ralston, will you not suspend your position until the committee goes into executive session without argument, and let the committee decide it first. Will that be all right, Mr. Chairman?

Mr. RALSTON. Suspend the argument on any question of impeachability until you have had an executive session?

Mr. FOSTER. Yes, that is my idea. I was not present at the meeting where that was agreed on.

Mr. SUMNERS. I was not present at any meeting where that matter was decided.

Mr. FOSTER. Personally, I want it to be in the open.

Mr. GRAHAM. You were present when that action was taken. However, the motion is to go into executive session, and I think it is better to do that than to have any discussion now, if it is the will of the committee. I have made the motion.

(The yea-and-nay vote was taken.)

The CHAIRMAN. All in favor hold up your hands.

Mr. FOSTER. We are going into executive session not to vote on whether we will hear arguments, but to consider the order in which we will take this up. I am opposed to any argument in executive session, but I do think it is the purpose of the committee to decide in what order we will take these things up. My motion is to consider the order.

Mr. GRAHAM. My motion is to consider whether we will go into executive session and hear argument. We can consider in executive session anything that we should wish to consider.

Mr. FOSTER. Mr. Chairman, is it the idea, then, that after the executive session that we shall continue this hearing——

Mr. GRAHAM (interposing). Yes, sir; and if we decide to hear these arguments in executive session we will hear them that way, and if we make an order as to the course of procedure that rule will be followed.

Mr. YATES. I am in favor of going into executive session to determine whether the session shall be open. I do not mean to put a question. I am just asking what the understanding is. My understanding is that the motion is to go into executive session to determine whether the hearings on the questions of evidence shall be open.

Mr. BIRD. The only question we are deciding is, Shall we go into executive session?

Mr. YATES. I think that was Mr. Graham's motion.

The CHAIRMAN. All in favor of that motion as modified, simply to go into executive session and then determine what to do, hold up your hands.

(The motion prevailed.)

The CHAIRMAN. The session will be resumed in half an hour.

(Thereupon, at 11.20 o'clock a. m. the committee proceeded to executive session.)

#### AFTER EXECUTIVE SESSION.

After executive session the committee proceeded as follows:

The CHAIRMAN. The committee will be in order. The committee has decided to take up specifications 13, 4, and 7, and hear what testimony you have to offer, with the understanding that as soon as those are finished, not later than next Tuesday, we will take up specification 1 and go through with the rest of them in the regular order.

Mr. RALSTON.  
Justice William

and the witnesses on No. 13 are Chief  
Justice George W. Wickersham, Samuel



Gompers, Guy Oyster, and James A. Finch, with the records of the department relating to the Jones pardon.

The matter could be expedited if I had the opportunity of examining those papers before I question the witnesses about them, and with that I have to rest.

The CHAIRMAN. Well, he has been subpoenaed—you know, Mr. Finch.

Mr. RALSTON. Mr. Finch is here, Mr. Chairman.

The CHAIRMAN. Suppose then the committee stands adjourned until 1.30. In the meantime you can examine those papers and we will be back and commence the taking of testimony promptly at that time.

(The motion was put and carried; whereupon at 12.10 o'clock p. m. the committee recessed until 1.30 p. m. this day.)

#### AFTER RECESS.

The committee met at 1.30 o'clock p. m., pursuant to the taking of a recess, Hon. Andrew J. Volstead (chairman) presiding.

The CHAIRMAN. We are ready to proceed. Call your witness.

Mr. RALSTON. Mr. Chairman, as a matter of expediting the further course of the proceeding, I want to ask the committee to be kind enough to issue subpoenas for all documents in the Department of Justice or in the Department of the Interior, relating to the case set out on page 54, No. 1; the purpose being that those documents may be brought here, and that we may have an opportunity to examine them before finally entering into the presentation of that phase of the case.

Mr. BOIES. Will you state what case that is?

Mr. RALSTON. That is the case in which certain favoritism has been charged in favor of the Standard Oil Co. on the part of the Attorney General relative to sections 16 and 36, in the Elk Hills District, California, the proceedings against the Standard Oil Co. being stopped at the very instant they were about to be started by orders of the Attorney General.

The CHAIRMAN. Is that set forth in specification No. 1?

Mr. RALSTON. Specification No. 1.

Mr. MICHENER. Which print?

Mr. RALSTON. This is a committee print.

Mr. CHAIRMAN. What document is that?

Mr. RALSTON. Committee print No. 1.

Mr. GRAHAM. What specification?

Mr. RALSTON. Specification No. 12.

Mr. MICHENER. That is a committee print.

Mr. RALSTON. Of this committee print.

The CHAIRMAN. Which division of specification No. 12 is it?

Mr. CHANDLER. That is on page 65 of the hearings.

Mr. RALSTON. We shall need some time to examine the record in order to present the case properly to the committee.

The CHAIRMAN. Does that mean that you want to take the records with you?

Mr. RALSTON. No; I do not think that we would have the right to do that; but we should be very glad to examine the records at all possible moments here in the committee room, or adjacent room, under the control of the committee.

Mr. CLASSON. Is that case now pending in a Federal court?

Mr. RALSTON. I think that this is a very serious matter——

Mr. CLASSON. I say, is that case now pending in the Federal court?

Mr. RALSTON. I do not think that it is pending. No; it was prevented from pending. It was stopped at the moment when the action of the protection of the interests of the United States was about to be begun.

The CHAIRMAN. Does that mean that you are asking to have them taken up before specifications 1, 2, 3, and others?

Mr. RALSTON. We do not want that to be taken up before the specifications of which I have already notified the committee, but it is to follow very closely on them.

Mr. GRAHAM. But, you heard the order of the committee that we were going to take these up in order, No. 1, 2, and so on.

Mr. RALSTON. I heard no such order.

Mr. GRAHAM. That order was issued this morning.

Mr. MICHENER. That came immediately after our executive session, that you would take up these three.

Mr. RALSTON. Well, I shall make the same protest against that when the time comes, as I made before when they were suggested.

Mr. GRAHAM. Well, that is the order of the committee, and you will have to govern yourselves accordingly.

Mr. HOWLAND. Mr. Chairman, the request referring to the documents was hardly specific. What documents are requested?

Mr. RALSTON. I think, Mr. Chairman, the request was absolutely specific. All the documents in the files for that matter.

Mr. HOWLAND. In the files, where? What department?

Mr. RALSTON. As I stated before, in the Department of the Interior, and in the Attorney General's office, under the Attorney General, all files with relation to it.

Mr. HOWLAND. So far as the files are concerned, over which the Attorney General has control, I think they can be made available at any time. I would not be authorized to speak for the Secretary of the Interior.

Mr. RALSTON. Well, we will be glad to have them shortly so that we may examine them, or at least that the committee may have them.

Mr. Finch, I think that I will call you as the first witness.

#### TESTIMONY OF JAMES A. FINCH.

The witness being first duly sworn, upon examination, testified as follows:

Mr. RALSTON. Mr. Finch, are you employed in the Attorney General's office.

Mr. HOWLAND. Pardon me for just a minute. Would the committee indulge me for just a moment to state our position in regard to this matter, before we take up any testimony in regard to it?

The CHAIRMAN. Yes.

Mr. HOWLAND. Well, that is very kind. I will not transgress, I assure you.

The CHAIRMAN. You will pardon me. Of course, you are only going to make a statement. You are not going to occupy the afternoon like that?

Mr. HOWLAND. Oh, no; just a statement—a brief statement.

The position which the Attorney General takes in this matter is that Mr. Burns is not on trial here; that the Attorney General is on trial; that those documents go away back to an incident which happened in 1907, in the bitterly-contested land fraud cases in Oregon, when Mr. ———

Mr. FOSTER. When was that?

Mr. HOWLAND. In 1907, when Mr. Francis J. Heney, who was district attorney, prosecuted on behalf of the United States Government the land fraud cases, and under whose orders Mr. Burns worked.

All of those matters relate to the pardon of a man convicted in 1907, and Mr. Burns has never been convicted of any crime. He has never been charged with any crime. He is not on trial here, and I submit to the committee that this testimony is irrelevant, because the question here is as to the efficiency, the integrity, and the character of Mr. Burns to-day, not in 1907.

So, without objection on the part of the Attorney General, all of those documents may go to the committee.

Mr. RALSTON. I do not see that that calls for any reply from me.

Mr. HOWLAND. I do not think so.

Mr. RALSTON. Mr. Finch, where are you employed?

Mr. FINCH. In the Department of Justice.

Mr. RALSTON. How long have you been in the Department of Justice?

Mr. FINCH. About 25 years, I should say.

Mr. HERSEY. Speak up so we can hear you.

Mr. RALSTON. What positions have you held in the department?

Mr. FINCH. I have held the position of clerk, law clerk, and pardon attorney.

Mr. RALSTON. How long have you been pardon attorney in the Department of Justice?

Mr. FINCH. Fourteen or fifteen years; I do not remember the exact number.

Mr. RALSTON. Were you pardon attorney in 1912?

Mr. FINCH. I was.

Mr. RALSTON. Was there referred to you, at that time, for investigation, in connection with a pardon application, the conduct of Mr. Burns?

Mr. FINCH. There was not.

Mr. RALSTON. Were you asked to report upon the pardon of one Willard N. Jones?

Mr. FINCH. May I ask by whom?

Mr. RALSTON. By your proper superior in the department?

Mr. FINCH. I was not.

Mr. RALSTON. You did make such a report, didn't you?

Mr. FINCH. I did.

Mr. RALSTON. You made it because you were called upon in your duties, did you not?

Mr. FINCH. I did not.

Mr. RALSTON. You mean you did it on your own motion?

Mr. FINCH. I did.

Mr. RALSTON. How did that happen?

Mr. FINCH. Because that is my regular duty.

Mr. HERSEY. Speak a little louder, we do not hear you.

Mr. FINCH. That is my regular duty.

Mr. RALSTON. The question of the pardon of Willard N. Jones, was referred to you for examination and report?

Mr. FINCH. It was not.

Mr. RALSTON. At any rate, you did examine the record?

Mr. FINCH. I did.

Mr. RALSTON. Have you that report here?

Mr. FINCH. I have.

Mr. RALSTON. In fact, there is here not alone your report, but one or two supplemental reports here, are there not?

Mr. FINCH. There are.

Mr. RALSTON. Going into the facts involved very extensively, isn't that true?

Mr. FINCH. There was.

Mr. CHRISTOPHERSON. That would not be the best evidence.

Mr. RALSTON. The reports are here and I do not want to encumber the record unnecessarily with them.

Was Mr. Wickersham, the Attorney General, at that time acquainted with your report?

Mr. FINCH. He was.

Mr. RALSTON. I will ask you if you recognize this paper which I hand you [handing document to witness]?

Mr. FINCH (after examining paper). I do.

Mr. RALSTON. Will you tell the committee what it is?

Mr. FINCH. It is the report of the Attorney General—Attorney General Wickersham—to the President on the application for pardon of Willard N. Jones.

Mr. RALSTON. Was that based on your report given at that time?

Mr. FINCH. It was.

Mr. JEFFERIS. What is the date of that?

Mr. RALSTON. May 10, 1912. I will offer them in evidence. I believe that you have identified this as being made by Mr. Wickersham.

Mr. FINCH. That is his signature.

Mr. RALSTON. I will offer them in evidence. This is a report to the President from the Attorney General.

Mr. HERSEY. That is a statement of the Attorney General years ago?

Mr. RALSTON. Yes.

Mr. HERSEY. He is living?

Mr. RALSTON. Yes, sir; and summoned as a witness.

Mr. MICHENER. Wouldn't it be well to identify that for examination?

Mr. RALSTON. I will ask, for the purpose of this case, that it be marked "Exhibit No. 1."

Mr. JEFFERIS. Mr. Chairman, doesn't that have reference to the recommendation of the pardon. Now, is not that the real fact in the case? Could we not have that admitted without incumbering the record here?

Mr. RALSTON. This is a very essential part of our case. The fact that he recommended the pardon, of course, may be admitted.

Mr. FOSTER. Do you propose to read it or put in the record?

Mr. RALSTON. Read it into the record, now.

Mr. HERSEY. For w' do you offer it?

Mr. RALSTON. In support of our allegations, under the particular clause we are dealing with, subdivision, I think, No. 13.

Mr. HERSEY. Do you mean to say that the statement that you have there, as to the recommendation for a pardon, is evidence here in any of your allegations?

Mr. RALSTON. Yes, sir; I do. It is the findings of the Attorney General of the United States, after a most exhaustive examination into the conduct and character of a man who now controls the movements of 600 Government employees; who controls the disbursements of millions of dollars; and who has, as will appear from this report, only escaped criminal prosecution, only could have escaped criminal prosecution, by the statute of limitations; who has committed very grievous offenses against public justice and the—

The CHAIRMAN (interposing). None of that statement has any business in this record. Offer your testimony, this is just arguing the case.

Mr. MICHENER. Mr. Chairman, may I ask one short question. Assuming that all of those things are true. That does not have reference to the Attorney General whom you expect to be able to prove here is guilty of wrongdoing. Do you state as an attorney here that you come prepared to prove that conduct of that kind has continued on down all through these years—these 15 or 17 years? If that is what you expect to prove, then it might be admissible. If not, it is not admissible. Do you expect to prove that that kind of conduct has continued?

The CHAIRMAN. We want testimony, questions and answers.

Mr. RALSTON. If the committee wants to go into that, and make the character of Mr. Burns an issue—

Mr. MICHENER. You can easily answer my question. I am simply asking you what you expect to prove, as you might be required to state by any judge, in any court in the land, whether you expect to connect that conduct up with present conduct. If you do, then it is relevant. If you do not, it would not be admitted by any court in the land, as you know—if this man were on trial.

Now, do you expect to connect that up with the present conduct? You can answer that yes or no.

Mr. RALSTON. May I ask what you mean by connecting it up?

Mr. MICHENER. Showing the continuation of the alleged reprehensible conduct from that time, the time that is stated there, down to now. Or, do you expect to show here that in the past his conduct was reprehensible, to rely upon that, something that happened 15 years ago?

Mr. RALSTON. My expectation was to show from the reports what the Attorney General and from the statement of the President of the United States, that in 1907 Mr. Burns was a man of that character.

Now, if Mr. Daugherty wants to make an issue of the reputation of Mr. Burns in the hearings showing that, it is a matter of his defense and not for concern of myself, I think.

Mr. MICHENER. That was just my question. You stated that this man did something 17, 18, or 19 years ago, and you are relying upon that until Mr. Daugherty proves that the gentleman who committed that offense, years ago, has reformed, and that he, Daugherty, is impeachable for appointing the man.

Mr. RALSTON. When Mr. Daugherty takes that issue, then we will be prepared to meet it. I do not think that it is pertinent now.



Mr. CLASSON. Mr. Ralston, do you not think that that would require us to go into all of the land-fraud cases? As I understand, there were a great number of land-fraud cases involving millions of acres of land, and that prosecutions were had under President Roosevelt's administration by Attorney General Bonaparte, and that would require the examination of the records to disclose what took place in those cases?

Mr. RALSTON. No; I think not. I do not think that we are concerned at all with the trial of the land cases, or the prosecution of the cases in Oregon; all that we are concerned with is the conduct of Mr. Burns.

Mr. CLASSON. Well, that is all in the records of those cases, is it not?

Mr. RALSTON. Presumably yes; and I have no particular opinion or information either way.

Mr. CLASSON. There were millions of acres of land involved.

Mr. RALSTON. Sir?

Mr. CLASSON. There were millions of acres of land involved.

Mr. RALSTON. Possibly; I do not know.

Mr. CLASSON. Where false entries had been made?

Mr. RALSTON. Possibly.

Mr. CLASSON. Which caused a national scandal at that time?

Mr. RALSTON. I am not concerned, myself, at all as to what the facts there are.

Mr. CLASSON. Well, that was the reason for the prosecution.

Mr. RALSTON. The only thing that does concern me is that the Attorney General and the President of the United States having denounced Burns as unfit for anything—you would not trust your pocketbook with him——

Mr. HOWLAND. Well, I will have to take exception and object to that. This man was not convicted of anything at that time, was not guilty——

Mr. RALSTON (interposing). I have taken no position about it. I know nothing personally on the subject. I may say that Mr. Wickersham apparently expressed doubt as to Jones and as to whether he—he might be undoubtedly guilty, but that he was compelled to pardon him because of the misconduct of Burns.

The CHAIRMAN. We want to get along with this testimony.

Mr. BIRD. If you will pardon me, Mr. Chairman, I would like to ask a question. You are stating an opinion of the Attorney General concerning the fitness of the man named Burns. Would that not be dictum?

Mr. RALSTON. Yes, sir.

Mr. BIRD. Would it not be dictum as to Mr. Burns?

Mr. RALSTON. No.

Mr. BIRD. This does not have any direct bearing on Mr. Burns's character.

Mr. RALSTON. Here is the situation.

Mr. BIRD. Isn't this the situation, that he made his charge against Burns, that through Burns's malfeasance in office he was deprived of a fair trial? Now, that put the issue directly up to Mr. Burns. Wasn't the issue that of Mr. Jones being pardoned?

Mr. RALSTON. The issue of Mr. Jones was the ultimate issue, perhaps, but the real issue was to determine whether Mr. Jones had committed a wrong.

## CHARGES AGAINST THE ATTORNEY GENERAL.

Mr. BIRD. Of course, you do not claim anything against Burns. Of course this made it an *ex parte* affair so far as Burns is concerned, but, of course, the suits, so far as they were concerned, and the evidence, does not have anything against Burns. So, I think that or, it seems to me—you are using it to show that the attention of the Attorney General was called to it, and that they had several accusations brought against Mr. Burns.

Mr. CHRISTOPHERSON. I think that we can determine whether or not we should consider that evidence, but I think that we had better go ahead with the testimony.

Mr. CHAIRMAN. That is what I am trying to get.

Mr. CHRISTOPHERSON. We can segregate what is admissible evidence from what is not admissible, and get it quicker in that way. I think that we had better go ahead.

The CHAIRMAN. Yes; we want to go ahead with the testimony.

Mr. JEFFERIS. May I ask a question there? Were there ever criminal charges filed against Burns?

Mr. HOWLAND. There never was.

Mr. RALSTON. I think not.

Mr. JEFFERIS. And the statute of limitations is what—twenty years?

Mr. RALSTON. I think so.

Mr. YATES. As one member of the committee, I would like to object to the testimony for the present. I think that it is *ex parte* and I think it is merely the opinion by one official in regard to the acts of another, and I object on those grounds. Then, the Attorney General himself might be present, and he could testify as to whether there was any misconduct and, he would be subject to cross-examination. I do not think that any man should be allowed to bring in a letter which, as I understand, is a letter of the Attorney General stating that this man is guilty of some misconduct. I do not think that it is evidence. I do not think that it ought to be admitted.

Mr. BIRD. It is not evidence, but, I think that the Chair can rule on it.

The CHAIRMAN. I overrule the objection.

Mr. HOWLAND. I wish to interpose an objection.

Mr. JEFFERIS. I object to the ruling.

Mr. BIRD. I also object.

Mr. MICHENER. I wish to enter an objection, for the reason that it concerns something that happened fifteen or twenty years ago, because he does not expect to connect it up in any way with the late day conduct of Mr. Burns, and in my judgment it is wholly irrelevant, immaterial, and incompetent.

Mr. BOIES. Probably through all this testimony, there will be taken such objections as legal procedure permits.

Mr. RALSTON. I assume that that is true.

Mr. YATES. I am not assuming. I want to interpose an objection now and here.

Mr. FOSTER. We now have six objections. I think that the Chair can rule on it.

Mr. RALSTON. Mr. Chairman, I assume that——

Mr. CHANDLER (interposing). Do you intend to assume that because a man was once supposed to be bad, that he continued to be bad?

Mr. RALSTON. No; that may not be. It very much depends upon the character of the offense, if it be a matter of impulse; if it be a matter of sudden temptation, for which, for the moment, he has not sufficient strength to stand, I am willing to conceive reformation, but there may be a class of cases which are so continued, as this was, so extended in character, so interwoven with one's whole moral nature, that we have a right to put him on his defense when he comes forward and says he has reformed, and when the Attorney General comes forward to say he has reformed. It depends upon the nature of the thing. Now, here was a depredation long continued on the part of——

Mr. GRAHAM (interposing). You were asked a question. Why can you not answer yes or no? Do you intend to maintain that he is guilty of some wrong which once committed continued over 17 years?

Mr. RALSTON. I say that it depends upon the character of the offense entirely.

Mr. HERSEY. Is there any record to show that Burns has had any opportunity to make a defense against the accusations charged?

Mr. RALSTON. Oh, he had all the opportunity in the world to defend himself, but, so far as the record is concerned, he never attempted to defend himself.

Mr. HERSEY. Are you stating an opinion or answering the question?

Mr. HOWLAND. I desire to interpose a traverse to that statement.

Mr. RALSTON. All right; I will offer the record as against your traverse.

The CHAIRMAN. All right; let us go ahead now with some testimony.

Mr. BOIES. There is one thing that we want to have made clear before we start, and that is do you state that what was done was done under the direction of Mr. Heney, then district attorney?

Mr. RALSTON. Mr. Heney, as I understand in these suits, was a special attorney sent up there to prosecute these suits? And to what extent he acted the record will have to show.

Now, as far as I can judge, he acted on his own responsibility, assumed the responsibility for what he did in a telegram to the then Secretary of the Interior, or at least to the secretary of the Secretary of the Interior.

The CHAIRMAN. We want to get the facts from the testimony, and not allow you that do not know anything about it to testify or put your remarks in the record. You should bring all of that out in the testimony instead of getting an expression of your opinion.

Mr. GRAHAM. And not have him give his impression.

The CHAIRMAN. He can only give his opinion, of course.

Mr. RALSTON. I can not make myself any clearer than this, gentlemen.

Mr. BOIES. I would like to ask a question——

Mr. RALSTON (interposing). This is headed, "Office of the Attorney General, Washington, D. C., May 10, 1922. In the matter of the application for pardon of Willard N. Jones."

Mr. HERSEY. Can't this go in the record, and can't we get it from reading the record?

The CHAIRMAN. We may want to know what is in this thing, at this time. We may never read the record.

Mr. RALSTON (reading):

The PRESIDENT.

SIR: On March 1, 1911, you commuted the sentence of Willard N. Jones in effect to four months' imprisonment in the county jail and to pay a fine of \$12,000. On March 16 you received a telegram from H. H. Schwartz, formerly chief of field service of the General Land Office, charging irregularities in the filling of the jury box from which grand jurors and petit jurors were drawn in the Jones cases, and also in the trial of the cases, and pursuant thereto you directed a further investigation to be made and that the execution of the penalty be deferred until the investigation be completed.

Shortly thereafter additional papers were filed to sustain the charge, and a report was received from United States Attorney McCourt with which he transmitted additional papers formerly belonging to William J. Burns, detective, which were found in the United States attorney's office. All of these were sent to you April 24, 1911, with a statement that I thought enough facts were submitted to throw a very decided doubt upon the fairness and impartiality in the method of selecting the jury and that in my opinion it would not be just to allow a man to be sent to prison as the result of a trial before a jury procured in the manner in which it was shown by the papers the jury before which Jones was tried was selected. I stated further that the papers also tended strongly to show an atmosphere surrounding the whole prosecution which was hardly consonant with the impartial administration of justice. I referred, however, to the fact that the papers had not been submitted to Mr. Francis J. Heney, the attorney who conducted the prosecution and who was at that time in California, and recommended in view of the delay which would result from securing a statement from Mr. Heney, that the sentence be commuted so as to relieve the defendant from actual imprisonment, or if you desired Mr. Heney's statement before acting, that the papers be transmitted to him for an expression of his opinion concerning the points of criticism. On April 23, 1911, you replied saying that you believed the execution of the sentence should be withheld until the papers had been submitted to Mr. Heney for comment and answer.

Mr. Heney's report, a lengthy document covering 77 pages, dated May 23, 1911, was received by the department June 28, 1911. Mr. Heney disclaims any knowledge of the matters charged, offers explanations and conjectures regarding the alleged irregularities, and expresses the firm conviction that the charges are baseless.

I read the statement and referred it to the pardon attorney directing him to look over the report carefully, and also the papers and documents which had been received since your prior action on the case, and requested him to inform me whether or not in his opinion there was anything in the papers which should modify the conclusions shown in Mr. Heney's report. This the pardon attorney attempted to do. On August 26, 1911, he informed me that he had practically completed the preparation of his report, and although he had reached a fairly satisfactory conclusion, there were matters which he could not settle with absolute certainty from the papers before him, and said that he thought it desirable the department should have at least some statement from Mr. Burns; that he had in my absence caused a telegram to be sent to Mr. Burns inquiring how he obtained possession of the lists of names which were in the possession of Captain Sladen and Jury Commissioner Bush prior to the filling of the jury box, to which Mr. Burns replied that there was no truth whatever in the statements that Captain Sladen or the jury commissioner had furnished him with advance lists of prospective jurors, and stating that he would look up data and furnish the department with a complete report of his connection with the matter, which was entirely straight and honorable; that he expected to be in Washington within a short time and would then make a report and answer interrogations by anyone interested. Thereupon I directed the pardon attorney to delay the completion of the report until he had seen Mr. Burns. Mr. Burns, however, did not make his report, or come to the department for months afterwards, although repeatedly communicated with about the matter.

The papers received up to this time and reviewed by the pardon attorney in connection with Mr. Heney's lengthy report were so voluminous that the pardon attorney's brief had reached nearly 80 pages. He delayed the completion of his report styled "Supplemental report," until October 10, and then closed it with a statement that he did not think any fair or proper conclusion could be arrived at until the department had received a complete statement from Mr. Burns, and that it might be necessary to receive statements from others connected with the prosecution; and in view of the size to which his report had grown he thought it would be well to make the result of his further investigations the subject of another communication. This he has done, styling it "Second supplemental report." It is well that he has done so and that he has delayed his report until this time, as the department is now in receipt of such further information in documentary form that there is little left to conjecture as to

what actually transpired regarding the filling of the jury box and the correctness of the charges made by petitioner and his friends. Fortunately this evidence is of such a character that it will not be necessary for you to follow very carefully the line of reasoning, conjecture, and comparison of documents and reports received which otherwise would have been required in order to reach, I think, a thoroughly satisfactory and convincing idea of what actually transpired.

Nor is it necessary to review the offenses of which Jones was convicted, for the reason that if the charges made by him are true it matters little what the offense was; he should not be required to serve a day of imprisonment or be otherwise punished. The facts relating to the conviction are, however, fully set forth in my former report, which is sent herewith.

It is charged by the defendant and his friends that William J. Burns, who was investigating jurors for Mr. Francis J. Heney, as stated by the latter in a communication to be dated August 23, 1911, sent his agents throughout the several counties from which names of jurors had been taken for the purpose of filling the jury box, and had these proposed jurors investigated prior to the time the box was filled. It is claimed that these agents reported to Burns, and that he was able in some way to control, and did control, the selection of names that went into the jury box; that in this way the jury box was filled with names of persons predisposed to convict, to wit, Democrats, Populists, Socialists, and Republicans belonging to what is known as the Simon faction, who were antagonistic to the so-called Mitchell faction of the Republican Party, to which Jones and the persons prosecuted belonged, and that none of the persons objectionable to Burns were selected. It is also claimed that offenses against the public land laws were of such common occurrence by reason of the lax methods employed by the Government officials, or even by their acquiescence, that very many people in that section of the country had made themselves liable to conviction and punishment under a strict interpretation of the law; and that the prosecution, through intimidation by threats of indictment and conviction, compelled witnesses both before the grand jury and petit juries to testify falsely, and that witnesses did testify falsely in the Jones and other cases. These charges have been substantially proven, particularly those relating to the irregularities in the filling of the jury box.

The department has in its possession the original reports of Burns's agents to him and those assisting him regarding the names of proposed jurors, which reports were made prior to the filling of the box. Some of the comments upon these names were as follows: "Convictor from the word go." "Socialist; anti-Mitchell." "Convictor from the word go; just read the indictment, Populist." "Think he is a Populist. If so, convictor. Good reliable man." "Convictor; Democrat. Hates Hermann." "Hide-bound Democrat. Not apt to see any good in a Republican." [Laughter.]

Mr. GRAHAM. It is a sort of universal complaint, not peculiar to this trial.

Mr. RALSTON (reading continued). "Would be apt to be for conviction." "He is apt to wish Mitchell hung. Think he would be a fair juror." "Would be very likely to convict any Republican politician." "Convictor." "Would convict Christ." "Convict Christ. Populist." "Convict any one. Democrat." Burns's favorite way of describing an unsatisfactory juror was to designate him as a "s—n of a b—h."

Mr. GRAHAM. Referring to the beginning of that sentence, just pardon me a moment—you were reading then?

Mr. RALSTON. Yes.

Mr. GRAHAM. You were reading from the reports of the subordinates who were sent out to investigate this jury?

Mr. RALSTON. No; I am reading from their reports and from records which are here.

Mr. GRAHAM. You prefaced that by saying you were reading some of the remarks made by the agents who had been sent out in the field?

Mr. RALSTON. Yes.

Mr. GRAHAM. You did not mean that those were Mr. Burns's remarks?

Mr. RALSTON. In many cases they are his remarks.



Mr. GRAHAM. Where is there one of his remarks that you have read?

Mr. RALSTON (reading):

Burns's favorite way of describing an unsatisfactory juror was to designate him as a "S. B."

Mr. CHANDLER. Whose language is that you are reading?

Mr. RALSTON. It is Burns's language.

Mr. CHANDLER. I mean when you say it was Burns's favorite method, are you observing that?

Mr. RALSTON. Mr. Wickersham is observing that; I am not observing it.

Mr. CHANDLER. You were looking at the committee when you uttered those words.

Mr. RALSTON. It is part of Mr. Wickersham's report on this Burns report where Burns described whoever happened to disagree with him.

The CHAIRMAN. Go on, now.

Mr. RALSTON [reading]. "And lists are checked as 'S. B.', 'S. B.', etc."—using the initials—"using the initials" is my remark.

Mr. JEFFERIS. At that time?

Mr. RALSTON. I have very voluminous reasons for believing he did.

Mr. BIRD. He is reading testimony and it is getting all confused as to what is in this letter of the Attorney General.

The CHAIRMAN. It is because members of the committee are asking him questions when he is reading it.

Mr. RALSTON. I am willing to answer any questions I can, frankly.

The CHAIRMAN. Go on and read.

Mr. RALSTON (reading):

Attached to the Polk County list found among Burns's papers is a slip bearing the following indorsement: "Pat McArthur checked all on Polk County list who were good: checked on said list for s——s of b——s."

The department also has Burns's original statements of adversely reported names, some in his own handwriting, others typewritten. Evidently Burns, or some one for him, had gone over the reports received and picked out the bad reports and had them typewritten. This was done county by county, with the exception of Multnomah County, concerning which reports are meager, and in practically every instance all of the names on these lists were left out, and occasionally were the only names left out from a particular county unless the name bore a circular check, which indicated that although the name appeared upon the list yet for some reason the proposed juror would be satisfactory. The conclusion is obvious. It would have been a remarkable coincidence for the jury commissioners to have selected for rejection even from one county only the names which were reported upon adversely and which had been collected and typewritten as above stated, but when this situation obtains with substantial uniformity throughout all of the counties save one, it is impossible to reach any other conclusion than that Burns, in some way, either with or without the actual knowledge of the jury commissioners, caused the selections to be made in conformity with his wishes. In view of the high regard in which Captain Sladen and the jury commissioners were held and the positive statements made regarding the probity of these men, I am disposed to regard it as improbable that they really understood the nature of the extent of what was being done, but there is abundance of evidence, in my judgment, to show that the work was probably done by Burns acting in collusion with Marsh, who was deputy clerk at the time.

It is noticeable that the positive statements of denial are chiefly in the nature of an assertion that neither Captain Sladen nor the jury commissioner could have been implicated in the affair. Even Burns in his first telegram does not reply directly, but says that there is no truth in the statements that Captain Sladen or Bush furnished him with the information, and Mr. Marsh's emphatic statements have been largely

of a similar nature. Indeed, some of the information which Mr. Burns secured, and secured so promptly, it would seem, could not have been obtained in any other way.

It is impracticable to go into all of the details of the corroborating evidence on this point, but if there were any doubt regarding Burns's connection with the affair and what he actually accomplished, it would seem to be set at rest by his own telegram in cipher to Mr. W. Scott Smith, then secretary to Hon. E. A. Hitchcock, the then Secretary of the Interior, on August 17, 1905, the very date the jury box was filled and on which the grand jury was drawn. The department has this original telegram. It reads as follows:

"Jury commissioners cleaned out old box from which trial jurors were selected and put in 600 names, every one of which was investigated before they were placed in the box. This confidential."

In addition to this an affidavit was received on the 12th instant from C. N. McArthur, who was one of Burns's agents in the field and afterwards speaker of the House of Representatives of Oregon. Mr. McArthur makes a complete disclosure of the whole situation which leaves no possible ground for doubt. Among other things he states that on or about July 25, 1905 (the jury box was filled August 17, 1905), Burns telephoned to him that he wished to see him in the district attorney's office, and while there, and in the presence of Francis J. Heney, Burns handed him a typewritten list and said, as nearly as Mr. McArthur can remember:

"Here, Mac, is a list of prospective jurors from several counties. Take it and weed out the s—s of b—s who will not vote for conviction and return it to me as soon as possible, for we are going to make up a new jury box, and we want to be sure that no man's name goes into the box unless we know that he will convict, for, by G—d, we are going to 'get' Williamson this time, you can bet your sweet life, and we will send this whole d—d outfit to jail where they belong. We are going to 'stack the cards' on them this time."

Mr. McArthur states that he became indignant and told Burns that such methods as he proposed were altogether improper and that no self-respecting man could be a party to them, and Burns replied:

"Any methods are justifiable in dealing with these s—s of b—s."

He states further that on or about September 1, 1905, he met Burns, and the latter said to him:

"Well, Mac, we weeded out the s—s of b—s; at least I think we did; and we will 'get' Williamson this time, and by G—d we will get the whole d—d crowd."

I read it to you in Burns's choice language, apparently.

Mr. GRAHAM. That is McArthur's report of what was said?

Mr. RALSTON. Yes.

"Old Sladen kicked like h—l because my men worked the lists over before they went to the jury commissioners, but it didn't do the old s—n of a b—h any good, and the corrected lists went in anyhow."

Mr. McArthur, it is to be remembered, was one of Burns's agents and furnished many of the reports which are on file in the department. He claims, however, that he did so with great reluctance and under duress, and after much persuasion. He does not state the nature of the duress, but I am informed is willing to do so if you insist.

There are also on file affidavits of persons who claim that they were induced through intimidation and threats to testify falsely in the Jones case. Such representations, in the absence of other corroborating evidence, would not be entitled to very great weight, but when it is considered how emphatic have been Mr. Burns's denials and his statements that the whole thing is a tissue of falsehoods from beginning to end, it is apparent, notwithstanding these denials, that the prosecution very probably resorted to intimidation of witnesses also.

In line with these practices it is further shown that one of the defendants, with Jones, a man named Sorensen, while he was presumptively being tried by the Government, was in the active employment of Burns and received compensation from the Government under the name of George Edwards. In this way Burns kept tab on Jones, and the latter relying upon Sorensen because he was a fellow defendant accepted as jurors persons to whom he would otherwise have objected.

I need not go further in recital of the highhanded, outrageous conduct on the part of officers of the prosecution in these cases. The Government can not properly countenance, nor is it expedient in these times of attacks upon courts and the judicial system of the United States, for it to lend its approval to any such procedure. In the light of the facts as they appear from the documents and reports before the depart-

ment, it does not seem to me that any person convicted of land frauds by a jury drawn from the box referred to had a fair and impartial trial. For this reason I feel it my duty to advise you that in my judgment Willard N. Jones should receive a full and unconditional pardon. In this connection I should say that Mr. Burns has been given the fullest opportunity to make a statement. The pardon attorney went to New York and interviewed him by appointment, but could not obtain a statement from him though he informed Mr. Burns that he had with him all of the documents that had been filed, and would be glad to show him every one and receive what comment he had to make. Thomas B. Neuhausen, Burns's righthand man in the investigation, and also closely connected with Mr. Heney in the prosecution of the cases, has been given an opportunity to make a statement, the pardon attorney informing him of the nature of the representations made and documents filed and indicating the conclusions to which the documents unanswered and unexplained must lead. No reply has been received.

Such statements as have been secured are of an evasive character or are directly contrary to the documentary evidence before the department. Even Judge Gilbert has submitted an explanation of his former emphatic statement denying that the charges made could be true. The course of the Executive, however, seems to me to be clear, and that is, he can not countenance the methods employed in the prosecution of these cases by requiring an enforcement of the sentence imposed in the Jones case; and I think also and for the same reason a pardon should be granted to Franklin P. Mays, although my impression is that the man is really very guilty and deserving of punishment.

Respectfully,

GEO. W. WICKERSHAM,  
*Attorney General.*

Mr. THOMAS. Mr. Ralston, I did not understand when you stated that report was filed.

Mr. RALSTON. The report which I have just read?

Mr. THOMAS. Yes.

Mr. RALSTON. It is dated May 10, 1912.

Mr. THOMAS. Who is the custodian of that report?

Mr. RALSTON. I understand that Mr. Finch has it under his charge.

Mr. THOMAS. Who is the pardon attorney referred to in that report?

Mr. RALSTON. Mr. Finch.

Mr. THOMAS. Is Mr. Burns in the employ of the department just now?

Mr. RALSTON. Very much so, or else he would not be here, possibly.

Mr. THOMAS. When did he receive his position in the Department of Justice?

Mr. RALSTON. When?

Mr. THOMAS. Yes.

Mr. RALSTON. Something over a year ago; I do not know the exact date.

Mr. THOMAS. And that report was on file at the time he was employed?

Mr. RALSTON. That report was not only on file, but it was called directly to the attention of the Attorney General and placed in his hands.

Mr. THOMAS. That is all I want to know.

Mr. BIRD. Mr. Chairman, as one of those who objects to the introduction of this letter, in order that the record may be plain, and believing that this testimony is not the proper testimony, for the reasons that have been expressed in the objection, I ask that this letter be stricken out as not tending to prove or disprove character in any sense of the word, and the fact that Mr. Burns's character was not in issue, or his conduct, in this opinion of the Attorney General.

Mr. CHANDLER. May I ask my colleague if he understood that this had been called to the attention of Mr. Daugherty; that this report had been put in his hands, with the fact that this connection that had been made?

Mr. BIRD. Yes. But I do not believe that that would alter the value in anything of this remotest kind of hearsay and opinion of one department of another.

The CHAIRMAN. I did not know that there is anything in this document at all pertinent to this specification.

I was holding it to be considered by the committee for what it is worth. Of course, it does not prove that Burns did any of those things. In fact, I understood from the pleadings, so far as they can be called pleadings, that it is going to be shown that these facts or alleged facts if you may call them such, had been called to the attention of the Attorney General. I will overrule the objection.

Mr. RALSTON. Now, Mr. Finch, did you make the examinations, or, perhaps, rather, did you offer Mr. Burns the opportunity to meet several statements which have been enumerated here.

Mr. FINCH. I did.

Mr. RALSTON. Did you do that more than once?

Mr. FINCH. I did.

Mr. RALSTON. Will you tell the committee, please, when and how?

The CHAIRMAN. I would object to that as immaterial, unless you bring it to the attention of the Attorney General. You can show the fact now as to what Attorney General Wickersham has reported; and, I presume, you propose to connect that by showing that it was brought to the attention of the present Attorney General. If so, that would be competent—but what took place between this man and Burns, does not seem to me is competent.

Mr. RALSTON. The question had been raised as to whether Mr. Burns was notified, and it was only for that reason I asked the question, not that I think the question in itself is important.

The CHAIRMAN. I do not think it is competent at all, because it has no relation to the matter.

Mr. RALSTON. What was the result of this report made by Mr. Wickersham to the President, William H. Taft?

Mr. FINCH. The President pardoned Jones.

Mr. RALSTON. I will show you this document—the first document from the files—and ask you if you recognize it; and if so, what it is? [handing paper to the witness].

Mr. FINCH. It is President Taft's indorsement of the action.

Mr. RALSTON. I will offer this in evidence. [Reading:]

The White House, Washington, June 2, 1912—

The CHAIRMAN. Is it the understanding that was brought to the attention of the present Attorney General?

Mr. RALSTON. Precisely. We expect to prove that, and we should consider ourselves out on this charge if we did not.

The CHAIRMAN. Do not make any speeches.

Mr. THOMAS. Somebody seems kind of peeved over there.

Mr. RALSTON (reading):

MY DEAR MR. ATTORNEY GENERAL: I am sorry that I am so occupied as not to have the time to make an extended examination of the application for pardon on behalf of W. N. Jones. From the case made, it is perfectly clear that his conviction was effected by the most barefaced and unfair use of all the machinery for drawing a jury that has been disclosed to me in all my experience in the Federal court. It gives sufficient reason to justify the pardon of Mr. Jones, as well as the condemnation of the methods of Mr. Heney and Mr. Burns. You may send me a pardon for signature.

Sincerely yours,

WM. H. TAFT.

GEO. W. WICKERSHAM,  
*Attorney General.*

Mr. BIRD. Mr. Chairman, I would like to have that letter included in the objection of being part of this same transaction.

The CHAIRMAN. Very well, that may be understood.

Mr. BIRD. What was the date of the writing of that letter?

Mr. RALSTON. Of the Taft letter?

Mr. BIRD. Of the Taft letter.

Mr. RALSTON. June—it is a little blurred—June 2, I think, 1912.

Mr. BOIES. Was it in connection with this prosecution that Mr. Heney was shot?

Mr. RALSTON. No; that was some local prosecution in San Francisco, as I remember the fact. Mr. Finch, have you with you all of the original records which were placed in your hands in connection with the investigation about which you have been testifying?

Mr. FINCH. So far as I know.

Mr. RALSTON. I simply want to call the attention of the committee to the fact that all the records are here, if the committee has further use for them. I don't think I have. I think that is all I want to ask Mr. Finch.

Mr. GRAHAM. Does it clearly appear in this record that Mr. Burns asseverates his absolute innocence of this whole accusation?

Mr. FINCH. Yes, sir.

Mr. GRAHAM. Now you say that Mr. Wickersham undertakes to say in the report that certain documents appear to be in the handwriting of Mr. Burns?

Mr. FINCH. Yes.

Mr. GRAHAM. How were they identified as being in the handwriting of Mr. Burns?

Mr. FINCH. I do not now recall.

Mr. GRAHAM. Did Mr. Burns say they were in his handwriting?

Mr. FINCH. He did not.

Mr. GRAHAM. He did not. Were any witnesses called, expert or otherwise, to show that they were in his handwriting?

Mr. FINCH. They were not.

Mr. CHANDLER. In what form did Mr. Burns deny that he had any connection with it? Was it a written report, a letter, or a private conference, personal, or what was it?

Mr. FINCH. By telegram and verbally to me.

Mr. CHANDLER. And those are on record in the department?

Mr. FINCH. They are.

Mr. CHANDLER. Are they here in these papers?

Mr. FINCH. Yes, sir.

Mr. HERSEY. The telegram referred to?



The CHAIRMAN. I suppose that Mr. Howland is here as the representative of the Attorney General, and if he wants to ask any questions he may do so at this time.

Mr. HOWLAND. I have just one or two questions. The report which Attorney General Wickersham presented to the President was made up from a report which you made to him, or possibly you drafted the letter yourself?

Mr. FINCH. I wrote it myself.

Mr. HOWLAND. And placed it before Attorney General Wickersham?

Mr. FINCH. I did.

Mr. HOWLAND. Whereupon he signed it and forwarded it to the President?

Mr. FINCH. He did.

Mr. HOWLAND. You prepared that letter from documentary evidence, letters, statements, and affidavits which were furnished you?

Mr. FINCH. I did.

Mr. HOWLAND. And your report then was made up from these reports, statements, documents, and telegrams which were furnished you?

Mr. FINCH. They were.

Mr. HOWLAND. Your record there contains, I think—am I right—letters from the attorneys of Mr. Jones?

Mr. FINCH. Yes, sir.

Mr. HOWLAND. The man who was convicted?

Mr. FINCH. Yes, sir.

Mr. HOWLAND. They were active in Oregon in obtaining these documents and statements, were they not, and forwarding them to you?

Mr. FINCH. They were.

Mr. HOWLAND. Mr. Marsh has on file in these documents a denial of the truth of these statements, hasn't he, Mr. Finch?

Mr. FINCH. So far as they apply to him.

Mr. HOWLAND. Yes; and Mr. Heney has a denial of the truth of these charges?

Mr. FINCH. I do not recall that Mr. Heney has directly denied them.

Mr. HOWLAND. He has a document on file in this record?

Mr. FINCH. He has a long letter.

Mr. HOWLAND. Yes; and the judge who tried the case also has a document on file there?

Mr. FINCH. He has.

Mr. HOWLAND. Justifying the course and saying that it was a fair and impartial trial. Does the evidence disclose—

Mr. RALSTON (interposing). I beg pardon—I object to that statement unless some such document is shown.

Mr. HOWLAND. I am asking Mr. Finch. I am not asking you. I am asking Mr. Finch is there a letter there from the judge?

Mr. FINCH. There is a letter from the judge.

Mr. HOWLAND. And in substance what does the judge say, that it was a fair and impartial trial?

Mr. RALSTON. I object to that.  
be produced and speak for itself.

letter, let the letter

Mr. HOWLAND. All right.

Mr. RALSTON. Mr. Wickersham says that Mr. Gilbert, Judge Gilbert, had to revise his judgment.

Mr. HOWLAND. Just a minute—is there a letter there from Judge Gilbert?

Mr. FINCH. There is.

Mr. HOWLAND. Will you turn to it?

Mr. FINCH. It would be difficult to find it.

Mr. HOWLAND. That is what I thought. That is the reason. Now, in substance, if I may be permitted, what does that letter say?

Mr. RALSTON. I object to that.

Mr. HOWLAND. All right. Then find the letter, Mr. Finch.

Mr. GRAHAM. I don't think we need to take that down. This is not a jury trial. This is an investigation, and if he can give us the substance we can verify it afterwards by the records if we wish to.

Mr. HOWLAND. Did Judge Gilbert say that he had a fair and impartial trial, this man Jones?

Mr. FINCH. I don't know that I can recall just what the judge did say.

Mr. HOWLAND. No; not in words, but in substance?

Mr. FINCH. I think he did at first; yes.

Mr. RALSTON. At first?

Mr. HOWLAND. And later what did he say?

Mr. FINCH. I do not recall that.

Mr. HOWLAND. Did any of these witnesses talk to you personally?

Mr. FINCH. Jones did.

Mr. HOWLAND. Jones came on here to Washington?

Mr. FINCH. Yes, sir.

Mr. HOWLAND. The man who was pardoned?

Mr. FINCH. Yes.

Mr. HOWLAND. Who else?

Mr. FINCH. I do not recall anyone except possibly lawyers.

Mr. HOWLAND. The lawyers for Jones? That is all.

Mr. BIRD. May I ask a question, Mr. Chairman? Back in your testimony you said something to the effect that Mr. Burns was called upon to meet these charges. Do you mean by that that he was called upon to meet the statements in the Jones matter or do you mean that he was called upon to meet charges against himself, Burns?

Mr. FINCH. He was called upon to explain the statements that had been made in behalf of Jones.

Mr. BIRD. In the Jones matter?

Mr. FINCH. With regard to the jury box too.

Mr. BIRD. But you do not mean he was called upon to meet charges against himself?

Mr. FINCH. Absolutely not.

Mr. CHANDLER. Mr. Finch, you prepared this for the Attorney General and doubtless you are familiar with all the facts from the very beginning and including the trial itself. Is there any charge that Burns had any connection with tampering with witnesses at the actual trial of the case?

Mr. FINCH. Yes.

Mr. CHANDLER. Was there any documentary evidence of any kind that came to your attention before you prepared this letter?

Mr. FINCH. Well, I am not sure about documentary evidence.

Mr. CHANDLER. I understand the charges are that there were about 2,000 names that he investigated, and finally 600 went to the commission from which to select a jury. Is that true?

Mr. FINCH. Yes, sir.

Mr. CHANDLER. Now, at the trial of the case Jones was represented by attorneys. They qualified the jurors, did they not, as to bias and prejudice?

Mr. FINCH. I presume so. I know nothing about it.

Mr. CHANDLER. In other words, at the actual trial of the case at which the conviction was found, no allegation has been made that Burns had any connection with it, is there?

Mr. FINCH. Not that I know of.

Mr. CHANDLER. You would have known it, would you not? You know all about the case. You prepared all the facts and investigated all the documents?

Mr. FINCH. If you will just repeat your question—I don't quite get it.

Mr. CHANDLER. I want to know as to the trial of Jones, the actual trial by which he was found guilty, if there is any intimation from any source that Burns had anything to do with the final selection of the jurors in that case?

Mr. RALSTON. At the time you mean?

Mr. FINCH. No; I know nothing about that.

Mr. HICKEY. Mr. Chairman, may we have Judge Gilbert's letter? May it be supplied later?

The CHAIRMAN. Yes.

Mr. HICKEY. Mr. Finch, will you be able to get Judge Gilbert's letter for the record?

The CHAIRMAN. Give us a copy of it.

Mr. FINCH. I assume it is there. I am sure it must be.

Mr. GOODYKOONTZ. We would like to see the report.

The CHAIRMAN. Now take the jurors that were selected, the 600, were they all of them jurors such as Burns wanted, or did they simply know which ones were in favor of conviction and the ones that might be for acquittal?

Mr. FINCH. It was thought that he knew what jurors were going into the box.

Mr. JEFFERIES. I did not hear that.

Mr. CHANDLER. Now he was convicted in a Federal court by a jury, and in a Federal court challenges for cause are without limit, are they not? And he was represented by an attorney who could qualify them as jurors and could have exhausted the entire 600 for cause if there was bias or prejudice shown. Isn't that true?

Mr. FINCH. I do not know how many challenges there were.

Mr. CHANDLER. Challenge for cause is without limit in the Federal jurisdiction, is it not? That is, for cause?

Mr. FINCH. I assume so.

Mr. CHANDLER. There is no charge that at the time of the trial he did not have competent attorneys and did not have a fair trial?

Mr. FINCH. I think not.

Mr. CHANDLER. Is it not the practice of district attorneys, both Federal and State, for themselves to investigate the character of proposed jurors before they come in? Is it not a fact that every

district attorney in the land goes out and finds out the bias and prejudice of jurors, and is that an allegation of unfairness?

Mr. FINCH. I believe they do.

Mr. CHANDLER. They do, do they not?

Mr. FINCH. I think so.

Mr. CHANDLER. Well, then, what this man Burns did as a detective is done by all the prosecuting officers of the land. Isn't that true? Of course they don't use the language that is alleged to have been used in this case, but isn't this a common practice and don't the subordinates use it? If you are a district attorney, would you think it wrong to find out in advance the character of a man who is to be taken as a juror?

Mr. FINCH. I would not.

Mr. CHANDLER. Do you not promote justice by finding out in advance?

Mr. FINCH. Yes, you would.

Mr. CHANDLER. Well, what was wrong about all this conduct, then? Well, I will withdraw that. I do not wish to take up the time of the committee further.

Mr. FINCH. I believe Heney recommended that.

Mr. GRAHAM. Heney recommended it be reduced to four months. Then afterwards Jones brought these facts to the attention of the Department of Justice?

Mr. FINCH. Correct.

Mr. GRAHAM. Then the investigation took place and these are the opinions that were forwarded finally to the President, who ultimately pardoned Jones?

Mr. FINCH. Correct.

Mr. GRAHAM. That is all.

Mr. GOODYKOONTZ. May I ask, Mr. Finch, while you are looking for the letter, that you also try to find the Heney report?

Mr. FINCH. The Heney report is here.

Mr. RALSTON. There are one or two questions I will have to ask Mr. Finch I find.

Mr. Finch, you do not wish to be understood as saying, do you, that it is a common practice of district attorneys to exclude from the original jury box people whom they fear will oppose conviction?

Mr. FINCH. I did not say so.

Mr. RALSTON. I did not understand you to say so, but the inference might have been drawn from your answer.

Have you ever known of any other instance where a prosecuting attorney or anybody associated with him has undertaken to control the selection of jurors in the first instance and examined them in advance to prevent their names going into the box?

Mr. FINCH. I haven't any knowledge on that subject at all.

Mr. CHANDLER. The attorney who defended him, however, could have disqualified all of the 600 for cause and asked for a new panel, could he not?

Mr. FINCH. Certainly.

Mr. RALSTON. If he had known it.

Mr. CHANDLER. But couldn't he have examined them as to their affiliations with the Democratic or the Populist Party, or whether they were prejudiced against land defendants, or if there was any

other ground of proper objection for cause, he could have had the entire 600 rejected?

Mr. FINCH. Yes, sir.

Mr. CHANDLER. And he did not do it. He had his day in court and there is no allegation that Burns had any connection at the time of the trial of the case with the jury.

Mr. RALSTON. Would the fact that a man was a Republican have disqualified him?

Mr. SUMNERS. Mr. Chairman, with regard to both questions and answers, I raise the point that it is argumentative and immaterial.

Mr. FOSTER. What was the date of the letter of the department once more, please?

Mr. RALSTON. June, 1912.

Mr. FOSTER. Mr. Finch, I am one member of this committee that has not been on the bench, so I wander every once in a while. 1912 was the year that there was quite a contest between Taft and Roosevelt, was there not?

Mr. FINCH. I do not recall.

Mr. FOSTER. This pardon was June, 1912. Do you remember whether Mr. Heney's political affiliations were rather decided at that time on behalf of one Roosevelt?

Mr. FINCH. I have no recollection at all. It had no effect on this case.

Mr. FOSTER. You did not grant the pardon, did you? You just wrote it for the Attorney General?

Mr. FINCH. I wrote the report.

Mr. RALSTON. Were you concerned except in getting at the facts?

Mr. FINCH. No, sir.

Mr. RALSTON. With regard to Mr. Burns, you have stated that he denied the charges. Has he ever made any explanation or any detailed statement with regard to them?

Mr. GRAHAM. Oh, you have already gone over that.

Mr. RALSTON. There is just one more question I want to ask. Was that matter called to the attention in any way of anybody subsequent to the Attorney General?

Mr. FINCH. I believe it was.

Mr. RALSTON. I will ask you if the letter I hand you was written as the result of that? [handing a letter to the witness].

Mr. FINCH (examining letter). It was.

Mr. HICKEY. What letter do you refer to, please?

Mr. RALSTON. By whom was that letter signed?

Mr. FINCH. By former Attorney General Gregory, I think.

Mr. RALSTON. I want to offer this letter dated June 15, 1918.

The CHAIRMAN. Whom did you say it was signed by?

Mr. RALSTON. By former Attorney General Gregory.

Mr. MONTAGUE. How does that affect Mr. Daugherty?

Mr. RALSTON. Only as part of the files that went to Mr. Daugherty at the time this appointment of Burns was made.

Mr. BIRD. Is this still on the Jones case?

Mr. RALSTON. Yes, sir.

Mr. BIRD. I make the same objection on the same ground.

Mr. GRAHAM. I will join in that objection, because this is said to be a letter from former Attorney General Gregory, and it doesn't say to whom it is addressed.



Mr. RALSTON. To William J. Burns.

Mr. GRAHAM. Then I object to it still more strongly.

Mr. FOSTER. Did you say Mr. Daugherty's attention was called to this before the appointment was made?

Mr. RALSTON. The attention of Mr. Daugherty was called to the whole file.

Mr. FOSTER. To this specific letter?

Mr. RALSTON. No, not this specific letter.

Mr. FOSTER. Then if you can not show that it was called to his attention specifically I think it ought not to be admitted.

Mr. MICHENER. Is that the original letter?

Mr. RALSTON. This is a carbon copy.

Mr. MICHENER. Does it bear Mr. Gregory's signature?

Mr. RALSTON. No.

Mr. MICHENER. Then the paper in your hand is a carbon copy of something else?

Mr. RALSTON. The first is a letter from W. J. Burns to Mr. Gregory, and a copy of Mr. Gregory's reply.

Mr. MICHENER. Is that the original?

Mr. RALSTON. That is the original.

Mr. MICHENER. Signed with a pen?

Mr. RALSTON. Signed with his hand.

Mr. MICHENER. Then there is a carbon copy of something?

Mr. RALSTON. The connection, I will admit, is not a close one. I want to be absolutely fair with the committee, but the only reason I have for offering or asking its consideration is that a second Attorney General confirms the opinion expressed by Attorney General Wickersham.

Mr. GRAHAM. That could only be the veriest hearsay. Mr. Chairman, I want to suggest to counsel here that this specification 13 charges practically that the Attorney General appointed Mr. Burns to this office and that he was an unfit person to occupy the office. Now I would suggest that the next step is to show what, if any, of these documents were called to the personal attention of Mr. Daugherty before the appointment of Mr. Burns.

Mr. RALSTON. Well, we have——

Mr. JEFFERIS. I want a ruling, Mr. Chairman.

The CHAIRMAN. I ruled it out.

Mr. RALSTON. We have two witnesses, and I think we will not need Mr. Finch any more. I don't think we need Mr. Finch or that the papers are needed further. I don't think we have further need of them.

Mr. GRAHAM. Mr. Finch, you will furnish for the record what was requested of you by one of my colleagues—the letters of Judge Gilbert?

Mr. FINCH. Yes, sir.

Mr. RALSTON. I asked for certain letters from Mr. McCauley, to and from Mr. McCauley, which ought to be here, and I think there is also a letter from Mr. Wickersham which has not been specifically called for, written at the time of the Burns appointment.

Mr. HOWLAND. Well, I know nothing about that. Were you subpoenaed to bring those?

Mr. FINCH. Which ones?

Mr. HOWLAND. He is referring to some letters.

Mr. RALSTON. Mr. Wickersham wrote about the time of the Burns appointment.

Mr. GRAHAM. That would not be evidence.

Mr. FINCH. I know nothing about those papers.

Mr. RALSTON. I think, if the committee will allow me——

Mr. FINCH (interposing). You refer to the correspondence of the Attorney General with Mr. McCauley?

Mr. RALSTON. Yes.

Mr. FINCH. I know nothing about that. I have never seen it; never heard anything about it.

Mr. RALSTON. I understood that some one here from the department had it, a letter from Mr. McCauley with the Attorney General's answer.

Mr. FINCH. I never saw it.

Mr. HOWLAND. Who did you subpoena to bring that?

Mr. RALSTON. I asked the committee to have it produced by the Department of Justice.

Mr. HERSEY. What is this? Let us have something more definite as to what you want produced.

Mr. RALSTON. I wanted the committee, and I asked the other day—I have several times—for a letter written by A. P. McCauley, of Toronto, Canada, to the Attorney General relative to the Burns appointment and the Attorney General's reply thereto.

Mr. HERSEY. Written to the present Attorney General?

Mr. RALSTON. Written to the present Attorney General; yes.

Mr. HERSEY. When?

Mr. RALSTON. I think I gave the date, in 1921, in my call to the committee.

Mr. HERSEY. Before the appointment of Burns or after?

Mr. RALSTON. After.

Mr. HERSEY. After the appointment of Burns?

Mr. RALSTON. Yes; but the Attorney General's reply has very direct pertinence in this case. I have asked further for the production of those two letters.

Mr. HICKEY. Who is Mr. McCauley?

Mr. RALSTON. I know very little about him except that he is a business man, I think a mining man or mining engineer, who perhaps spends his time between Toronto and New York. He had had some very unfortunate experiences with Mr. Burns and placed some information with regard to them in the Attorney General's hands, and the Attorney General responded, yes; he knew all about it before he appointed him.

Mr. HICKEY. Is he an American citizen.

Mr. RALSTON. I think so. I think he is in New York at this moment, though I have not his address.

Mr. HERSEY. What was it about.

Mr. RALSTON. He was falsely arrested by the Burns representatives and he brought a suit against Burns for damages resultant, and I think he recovered.

Mr. MICHENER. Mr. Ralston, would that be admissible? If this man McCauley or somebody else somewhere, somehow wrote a letter to the Attorney General of the United States and stated in that letter that I was guilty of thievery and a great many things,

and the Attorney General wrote back and said he knew my record, and knowing that record he had appointed me, would it be proper to bring before the court, the jury, the charges made in a letter by a witness who was not present, who could not be cross-examined, and whose statements might lead nowhere, and at the same time they would have their effect in prejudice upon the court and jury and upon the country. Do you think that is fair?

Mr. RALSTON. I want to be entirely fair, and I think I am fair.

Mr. MICHENER. Do you think that is fair?

Mr. RALSTON. I think that what I am doing is fair. Here is a man who produces certain documents which the Attorney General's office has, showing the character of Mr. Burns; the Attorney General says:

Yes; I knew all about these things before you wrote me, and I knew about them at the time I made the appointment.

Mr. MICHENER. Then you, by your process of logic, prove that the statement of what a man said was true by the letter of the Attorney General?

Mr. RALSTON. I would use it simply to the extent that the Attorney General knew he was appointing a man under certain charges and in certain respects under conviction of wrongdoing at the time he put him in.

Mr. MICHENER. If you have evidence I want it, but I do want it in a way that will not prejudice anyone.

Mr. RALSTON. Well, I think the McCauley letters speak for themselves.

The CHAIRMAN. I think that is very clear that it is not admissible. It is nothing but hearsay.

Mr. RALSTON. It goes beyond hearsay.

Mr. FOSTER. It is an admission of the Attorney General himself of full knowledge of those things and then he goes ahead.

Mr. RALSTON. Yes, sir.

Mr. GOODYKOONTZ. Have you copies of the letters?

Mr. RALSTON. Yes, I have.

Mr. GOODYKOONTZ. Suppose you pass them up to the chairman and let him see them?

Mr. RALSTON. I say I have them; I do not know whether I have them with me at this time.

The CHAIRMAN. Just let me look at them if you have them.

Mr. FINCH. I do not know what papers you are inquiring about. I have never heard of the McCauley papers; I have never had them in my possession and don't know anything about them.

Mr. CHANDLER. As a matter of routine duty in your office, is it not a fact that Attorney General Wickersham never went through this record but signed the letter upon your recommendation that the facts were true?

Mr. FINCH. I think not. I do not think any Attorney General does that.

Mr. CHANDLER. Well, I know, but from day to day he signs letters as a matter of form frequently, and takes your word for it as the head of that particular department?

Mr. FINCH. He changes them occasionally. He never takes them entirely as I send them to him. He makes some comments.

Mr. CHANDLER. Is it not a fact that the Attorney General did not investigate the record in this case?

Mr. FINCH. I have no knowledge of that.

Mr. CHANDLER. He took your recommendation? You wrote it yourself and he signed it?

Mr. FINCH. I wrote it.

Mr. GOODYKOONTZ. Mr. Finch, for the purpose of the record I wish you would describe as well as you can the volume of the files you have on the table. Tell us briefly how many papers, documents, or pages are contained in those three volumes, so that the record may show whether or not the Attorney General probably had the time to, or virtually did, read all the papers in the files.

Mr. FINCH. The papers are exceedingly voluminous. I have no recollection as to the number of them. There is a lot of them.

The CHAIRMAN. Is it not a fact, Mr. Finch, that in most of these pardon cases the Attorney General examines the reports made by your division, or whatever it is, and that he has to depend practically upon those reports for his judgment in reference to a case?

Mr. FINCH. He has to depend largely on the accuracy of the pardon attorney.

The CHAIRMAN. And of course a great many of them have a very large number of papers of all kinds and descriptions attached to them, so that it would take a very large amount of time—a good deal of time—to examine them?

Mr. FINCH. It would be impossible for him to examine all of them.

Mr. JEFFERIS. Mr. Chairman, may I ask a question? Mr. Finch, do you know the date that Mr. Burns was appointed to his present position?

Mr. FINCH. I do not.

Mr. HOWLAND. It was August, 1921.

The CHAIRMAN. Can you find those letters?

Mr. RALSTON. I have them—or at least copies—in my office. Unfortunately I did not bring them with me. I can produce them at the next meeting of the committee.

Mr. CHANDLER. Mr. Ralston, you made two statements here, that the files—that the Attorney General was referred to the files. I asked you a question first about the letter of Mr. Wickersham and the pardon letter of the President at the time, and you said these had been actually put into the hands of Mr. Daugherty. Did you mean that physically or was it merely in the files with the others?

Mr. RALSTON. I mean they were brought right personally into his presence.

Mr. CHANDLER. But this particular letter, was it put into his hands?

Mr. RALSTON. This particular letter? The particular letter was called to his attention and he——

Mr. CHANDLER (interposing). You had a letter in your hands—I will designate the letter. It is the letter of the Attorney General recommending the pardon of Jones, and to that was attached, on the motion of my colleague from Ohio, the letter of the President pardoning him. I asked if those papers had been brought to the attention of the Attorney General, and you said you were prepared to prove that they had been put into his hands.

Mr. RALSTON. Yes, sir.

Mr. CHANDLER. Are you; that particular one separate from the others?

Mr. RALSTON. Yes, sir; that is what I expect to show.

Mr. GRAHAM. Well, let us have the witnesses.

Mr. RALSTON. Well, I will ask Mr. Oyster to take the stand.

Mr. HOWLAND. With reference to these files, what is the order of the committee? Can they be returned?

Mr. GRAHAM. I would suggest that Mr. Finch take charge of them.

Mr. HOWLAND. Subject to the call of the committee?

Mr. GRAHAM. Yes.

Mr. HOWLAND. That authorizes him to take them back and hold them subject to the call of the committee?

Mr. GRAHAM. Yes.

Mr. HOWLAND. And he is to go back to work and take custody of these files, subject to the order of the committee?

Mr. GRAHAM. Yes.

Mr. HOWLAND. With the one exception that he is to produce the Gilbert letters.

Mr. GRAHAM. Yes.

Mr. HOWLAND. And the Heney report.

Mr. RALSTON. If one Gilbert letter is produced I want both of them.

Mr. HOWLAND. All right, both of them.

Mr. RALSTON. And the Heney report. If he has got several in there I want them all.

Mr. FOSTER. Did you find that letter, Mr. Ralston?

Mr. RALSTON. No; we are trying to find it.

Mr. Oyster, will you take the stand?

#### TESTIMONY ON MR. GUY H. OYSTER.

(The witness was duly sworn by the chairman.)

The CHAIRMAN. What is your full name?

Mr. OYSTER. Guy H. Oyster.

Mr. RALSTON. Mr. Oyster, where is your residence?

Mr. OYSTER. Thirty-nine hundred and forty-one Legation Street, Chevy Chase, D. C.

Mr. RALSTON. And your occupation?

Mr. OYSTER. I am confidential secretary to Samuel Gompers, president of the American Federation of Labor.

Mr. RALSTON. How long have you held that position?

Mr. OYSTER. I have held it since August, 1918.

Mr. RALSTON. Did you have occasion to accompany Mr. Gompers at one time, going to the Attorney General's office, at which the appointment of Mr. Burns was under discussion?

Mr. OYSTER. I did.

Mr. RALSTON. Will you state what happened at that time?

Mr. OYSTER. Mr. Daugherty's office called Mr. Gompers's office by phone on July 27, 1921, about 12.15 noon, and requested that he come to Mr. Daugherty's office as soon as possible.

Mr. HOWLAND. I would like to inquire what document the witness is reading from—a typewritten document he is reading from.

Mr. RALSTON. Answer the question.

Mr. OYSTER. Part of my duty——



Mr. GRAHAM (interposing). Never mind that; that is a simple point that we want to know about—that record.

Mr. OYSTER. It is part of my duty to make a memorandum of all matters which pertain to conferences which Mr. Gompers has when I am in his presence, and this was a memorandum which I wrote after my return to the office, after the conference in question. I simply use it to refresh my mind.

Mr. RALSTON. Do you know that the statements there are correct?

Mr. OYSTER. I know that the statements are correct; I wrote them myself.

Mr. MONTAGUE. Have you any independent recollection of the statements outside of the memorandum?

Mr. OYSTER. I have. I have read them frequently since this question has come up, to refresh my memory, and from what I knew to be the case several hours after it transpired.

Mr. RALSTON. You may proceed.

Mr. OYSTER. I can proceed better with it, but I can proceed without it. Mr. Gompers, or, at least, the office, replied; I got the phone message and replied, after taking it up with Mr. Gompers, that he would be there as soon as he could get a taxicab to convey him, which he did. He went and I went with him. And upon being allowed to enter, Mr. Daugherty explained to him that the matter he wished to discuss was a reorganization of the Investigation Bureau of the Department of Justice; that at that time there were 600 employees of that department; that he was not in sympathy with the way they were working, which was more or less of "snooping" around, as he expressed it, in the business of other people.

The CHAIRMAN. That is not evidence.

Mr. GRAHAM. I want to suggest, Mr. Chairman, that the witness be confined to telling us the facts. This is a proceeding under specification 13. You are now trying to prove that Mr. Daugherty obtained personal knowledge of these records. What Mr. Gompers said ought to be proved by him himself, if he comes here and submits to cross-examination; let him show what, if anything, was done by which this record was called to the attention of Mr. Daugherty; that is a simple question.

Mr. RALSTON. Mr. Gompers, we are advised, will be here certainly to-morrow morning.

Mr. GRAHAM. Never mind that; this witness is on the stand now.

Mr. RALSTON. But he may certainly testify to what passed.

Mr. CHANDLER. But we want to exclude all arguments, and have him tell the facts in the case.

Mr. OYSTER. Those were his exact words that I was giving.

The CHAIRMAN. What do you know, so far as this conference was concerned?

Mr. OYSTER. I am trying to confine it to that as much as I can; I am not a lawyer.

Mr. JEFFERIS. This witness can testify to what conversation occurred between Mr. Gompers and Mr. Daugherty while he was there.

Mr. GRAHAM. It is not pertinent to this investigation at all.

Mr. OYSTER. I am speaking entirely of Mr. Gompers and Mr. Daugherty; that was what he was called there to discuss. He said he was going to reorganize the department; and he wanted the best

man he could get for the chief of that investigation bureau; and he mentioned the name of William J. Burns. Mr. Gompers, who had seen in the press statements——

Mr. GRAHAM (interposing). Now, are you telling what was said? Did he say he had seen it in the press?

Mr. OYSTER. Well, Mr. Gompers thereupon called to the attention of the Attorney General a copy of a letter from Attorney General Wickersham to President Taft, which was read here to-day. Mr. Daugherty——

The CHAIRMAN (interposing). Well, did he have the letter there? How did he follow it up?

Mr. OYSTER. If I could digress for a minute, I can make it clear. I will try not to say anything that is not permissible. Mr. Gompers and Mr. Wickersham were on the train one day and this question came up, and Mr. Gompers asked Mr. Wickersham about it and Mr. Wickersham said, "If you write the President, you can get a copy of the letter"; and Mr. Gompers wrote to the President and got a copy of the letter, and published it in the American Federationist of July, 1912. I have a copy in my possession here now, which I had at that time. It was called to Mr. Daugherty's attention, and he pressed a button, and one of his assistants responded, and he said he wanted the papers in that file, in reference to this letter that he had. The assistant returned with a pamphlet, which was compared in sufficient detail to identify it as being exactly the same thing; whereupon——

(At this point the witness whispered to Mr. Ralston.)

Mr. GRAHAM. Do not confer with counsel.

Mr. YATES. That was a private conversation.

Mr. GRAHAM. We want to hear about the conference.

Mr. YATES. What did you just say to counsel? What did you ask him?

Mr. OYSTER. I was going to say what Mr. Daugherty replied to Mr. Gompers.

Mr. YATES. You said something to counsel?

Mr. OYSTER. I asked him should I mention the fact of what Mr. Daugherty said to Mr. Gompers; that was taking it one step farther——

Mr. GRAHAM (interposing). That was harmless; go ahead.

Mr. OYSTER. I am sure it was. Other matters were taken up which I do not consider relevant, and I will not testify to them unless I am asked what further took place. That is the connection, as I understand it.

Mr. RALSTON. Do you remember what there was in the file that was produced at that time?

Mr. OYSTER. It was a pamphlet which was compared with this copy and identified as being an exact—not an exact replica, but a copy of this letter which I have.

Mr. RALSTON. Did this occur before the appointment of Burns?

Mr. OYSTER. July 27, about noon time, 1921.

Mr. RALSTON. How long after that was Burns appointed, do you know?

Mr. OYSTER. Shortly after that we saw in the press that he had been appointed.

Mr. RALSTON. I think that is all.

Mr. GRAHAM. That is all.

The CHAIRMAN. That is all, unless Mr. Howland wants to ask him questions.

Mr. HOWLAND. Just one question, Mr. Oyster. Did you not request an interview with Mr. Daugherty?

Mr. OYSTER. No, sir.

Mr. HOWLAND. You were invited to come there?

Mr. OYSTER. We were called up, just as I have testified, by phone.

Mr. HOWLAND. Without any previous request at all for an interview?

Mr. OYSTER. Yes.

Mr. THOMAS. Was this report of Attorney General Wickersham, that was read here, called to Mr. Daugherty's attention on that occasion?

Mr. OYSTER. It was, sir.

Mr. HOWLAND. That is all.

### IN RE EVIDENCE AND SUBPENA OF WITNESSES.

Mr. RALSTON. That is all, apparently. Now, I have asked for the summoning of Chief Justice Taft and Mr. Wickersham.

Mr. GRAHAM. What do you propose to prove by Chief Justice Taft?

Mr. RALSTON. I propose to verify—the verification hardly seems necessary; but I propose to ascertain as to the granting of the pardon, his recollection about it, and his indorsement; and there are one or two other questions——

The CHAIRMAN (interposing). There is nothing in that. I had a talk with him with reference to it yesterday.

Mr. GRAHAM. You have in the record his letter, and that is all you could get from him.

Mr. RALSTON. I have not seen his letter.

Mr. GRAHAM. You read it.

Mr. RALSTON. Oh, it is that letter? I thought you meant his letter of yesterday.

Mr. GRAHAM. No; that is all he can say.

The CHAIRMAN. And I suppose that is all Mr. Wickersham could say.

Mr. RALSTON. No; I think he could say more.

The CHAIRMAN. What does he know about it?

Mr. RALSTON. He can testify as to the extent of his personal investigation; he can testify as to any personal interviews or correspondence that may have taken place between himself and Mr. Daugherty.

Mr. FOSTER. Can these gentlemen prove any interviews or correspondence that took place between Mr. Wickersham and Mr. Daugherty in the matter? Do you think so?

Mr. RALSTON. Yes, I do; I may be mistaken, but I do.

Mr. GRAHAM. Well, certainly Chief Justice Taft can do no more than verify his letter; he had no personal knowledge of these things; he got the letter of the Attorney General, granted the pardon, and that is the end of his connection with it.

Mr. RALSTON. I do not press the matter, so far as Chief Justice Taft is concerned, but I do press it with regard to Mr. Wickersham.

Mr. GRAHAM. That is all right.

Mr. RALSTON. I think those are all the witnesses we have here to-day. I supposed Mr. Wickersham would be here.

Mr. HERSEY. Have you any witnesses outside of Mr. Wickersham on this charge?

Mr. RALSTON. Unless I can get hold of Mr. Macaulay, and I want to get Mr. Macaulay's letters before the committee, and I think it is important that they should be produced from the files of the Department of Justice.

Mr. HERSEY. Outside of that, have you anything further?

Mr. RALSTON. Nothing at all, because there are inclosures to Mr. Macaulay's letters and the committee should see them.

The CHAIRMAN. Now, is Dow Stevenson here?

Mr. RALSTON. Mr. Stevenson is called on another issue, as I stated, of the enforcement of the inspection laws of the United States. Mr. Stevenson and Mr. Horn will both be here to-morrow morning ready to go ahead on that point.

Mr. GRAHAM. Which specification does that apply to?

Mr. RALSTON. The fourth, I believe.

Mr. FOSTER. Have you closed on No. 13, except as to the Macaulay correspondence and Mr. Wickersham?

Mr. RALSTON. And Mr. Wickersham. I want to say that I have been in error in saying that Mr. Walsh would appear on one of the charges; I find that I was not authorized to say that.

The CHAIRMAN. The probabilities are that we will get through with this charge to-morrow. What will we do the day after?

Mr. HOWLAND. Mr. Chairman, I probably can be of assistance with regard to the Macaulay letter. I find that, at a later period—turn to page 72 of Serial No. 1 in this matter. It is alleged that at a later period, and after the appointment was made, under date of September 17, 1921, Mr. A. P. Macaulay, of a certain address in Toronto, Canada, "again furnished the Attorney General." Now, in view of the allegation in the specification that this Macaulay letter was subsequent to the date of the appointment, would the committee still think it was material to produce that letter if we can find it?

Mr. GRAHAM. I do not think it is evidence.

Mr. HOWLAND. We are willing to produce it, you understand.

Mr. RALSTON. I thought I had made myself clear. It is not that the Macaulay letter itself is in point, but that the reply of the Attorney General to the Macaulay letter is the important thing.

Mr. HOWLAND. Oh.

Mr. RALSTON. As well as the inclosures which Mr. Macaulay sent with his letter.

Mr. FOSTER. That is quoted here in this record.

Mr. RALSTON. Not the inclosures.

Mr. HOWLAND. What is the desire of the committee on that? The correspondence having taken place subsequently to the appointment, how can it be material on the question of the appointment?

Mr. RALSTON. The admissions of the Attorney General are important things; and you can not understand them without having the Macaulay letter and the inclosures sent with them.

Mr. MONTAGUE. And does the Macauly letter which you have in mind contain any further statement than the paragraph down on page 72, third paragraph from the bottom? You quote from it there.

Mr. RALSTON. I have not seen that record.

Mr. MONTAGUE. That seems to be the whole letter; I do not know whether it is or not.

Mr. BOIES. The third paragraph from the bottom.

Mr. RALSTON. This says, "Mr. Macauly again furnished to the Attorney General a large number of documents, tending to show the unfitness of W. J. Burns." Those documents we want produced, because of the reply of Mr. Daugherty, who says that, "I have been interested in reading your inclosures——"

Mr. MONTAGUE (interposing). I beg your pardon, but that is not the question I asked. The question I asked was, Whether the third paragraph from the bottom of that page, in which he quotes a letter from Mr. Daugherty—is that or is it not the letter which you desire produced?

Mr. RALSTON. Yes.

Mr. MONTAGUE. Is that the whole letter, or only a part of the letter?

Mr. RALSTON. The letter of Mr. Daugherty—I think that is all.

Mr. MONTAGUE. That is all; but I understood you to say that you are more interested in the letter of Mr. Daugherty than you are interested in the letter of Mr. Macauly.

Mr. RALSTON. I am interested in the inclosures of Macauly's letters.

Mr. FOSTER. You wanted Mr. Daugherty's admission that he saw the inclosures before he appointed Burns, and that the inclosures showed what kind of a man he was.

Mr. HOWLAND. Now, Mr. Chairman, so far as the Macauly letter is concerned, I am prepared to admit on behalf of the Attorney General that the quotation in specification 13 is accurate, in which he says:

I have been interested in reading your inclosures, which information I had before considering Mr. Burns's appointment. I have known Mr. Burns for many, many years, and am quite sure he will render me and the administration faithful and efficient service.

Mr. RALSTON. Will you produce the Macauly letter and the inclosures?

Mr. GRAHAM. Well, the Macauly letter and the inclosures, it seems to me, are not admissible at all; they will have to be established by evidence; a man can not write a letter and say a lot of things, and then you can not produce that against a certain person as evidence of the things stated in that letter.

Mr. RALSTON. It shows that he had notice of the thing.

Mr. FOSTER. It shows that the allegation was made?

Mr. RALSTON. Yes.

Mr. FOSTER. But the truth of the allegation is not established by it.

Mr. RALSTON. No.

The CHAIRMAN. The appointment had been made.

Mr. RALSTON. But the admission that is made concerns a time antedating the appointment.

Mr. FOSTER. I think that is clear. In other words, Mr. Daugherty's letter admits that he had the information contained in Mr. Macauly's



letter before he made the appointment of Mr. Burns; it is an admission on his part that he knew as to the contents of the inclosure before he made the appointment. I can not see why that is not relevant.

Mr. BOIES. Will these inclosures prove anything that has not been established otherwise?

Mr. RALSTON. I can not answer that question; I have not seen the inclosures.

Mr. BOIES. You never have seen them?

Mr. RALSTON. I never have seen them. I am not conscious of having done so.

The CHAIRMAN. Now, what witnesses do you want for the day after to-morrow?

Mr. RALSTON. I am not sure that I want anybody day after to-morrow; if I do, it will be Mr. Richberg, and perhaps it would be well if he were summoned for day after to-morrow.

Mr. CHRISTOPHERSON. He was the attorney in the injunction cases?

Mr. RALSTON. Yes.

The CHAIRMAN. Anybody else?

Mr. RALSTON. No; I think not; not at present.

The CHAIRMAN. I would like to ask you about that specification—is it the seventh?

Mr. RALSTON. I do not carry the numbers in my head.

The CHAIRMAN. It relates to the——

Mr. RALSTON. It relates to the Chicago injunction matter.

The CHAIRMAN. That is Richberg. Now, you say he is the only one you want on that?

Mr. RALSTON. He is the only one I have now.

The CHAIRMAN. There ought to be some more.

Mr. FOSTER. Are we to start with No. 4 or No. 7 in the morning?

The CHAIRMAN. No. 4 in the morning, as I understand, and you have got only two witnesses, so far as I know, on that.

Mr. RALSTON. But their testimony will be very long.

The CHAIRMAN. Well, it may be.

Mr. RALSTON. I think one, at least, of them, will take the day. You have three witnesses for to-morrow—Mr. Horn, Mr. Stevenson, and Mr. McChord.

Mr. CHRISTOPHERSON. Thursday we ought to have more than one.

Mr. GRAHAM. Mr. Wickersham will be here.

Mr. RALSTON. And I do not think he will get through to-morrow. Mr. Stevenson is here.

The CHAIRMAN. How about Mr. Horn? Is he here?

Mr. RALSTON. No; he is in Cleveland.

The CHAIRMAN. He has not been subpoenaed?

Mr. RALSTON. No; but he will obey a telegraphic subpoena. I supposed that had gone out before now.

The CHAIRMAN. I had not had information about it.

Mr. RALSTON. I asked for it this morning; I asked that he be summoned.

Mr. FOSTER. Let us get at that. This morning he did state that, but he did not give his initials.

Mr. RALSTON. Yes; I gave that information—Oscar J. Horn.

The CHAIRMAN. And Stevenson?

Mr. RALSTON. Thomas Stevenson; and I advised the sergeant at arms that he would undoubtedly obey a subpoena by telegram.

The CHAIRMAN. Do you mean Horn?

Mr. RALSTON. Both of them

The CHAIRMAN. Stevenson is here now?

Mr. RALSTON. No; he will be here.

The CHAIRMAN. Now, you have Horn, Stevenson, and Mr. McChord for to-morrow?

Mr. GRAHAM. And Mr. Wickersham.

Mr. RALSTON. And Mr. McChord for to-morrow; and Mr. Gompers will be here to-morrow morning.

The CHAIRMAN. Now, I presume that Mr. Gompers will not have to be subpoenaed again?

Mr. RALSTON. No.

The CHAIRMAN. He was subpoenaed for to-day and the subpoena directed him to stay here.

Mr. RALSTON. He will be here to-morrow.

The CHAIRMAN. Now, those that have been summoned here that you do not want any more. Those will be discharged, so that there will be no further charge against the Government, so far as they are concerned.

Mr. FOSTER. You have no further occasion to use the Chief Justice?

Mr. RALSTON. No.

Mr. MONTAGUE. Before we adjourn, Mr. Chairman, do we continue on Specification No. 13?

The CHAIRMAN. We will hear Mr. Gompers.

(Thereupon, at 3.35 o'clock p. m., the committee adjourned until Wednesday, December 13, 1922, at 10 o'clock a. m.)

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COMMITTEE ON THE JUDICIARY,  
HOUSE OF REPRESENTATIVES,  
*Wednesday, December 13, 1922.*

The committee met at 10.30 o'clock a. m., Hon. Andrew J. Volstead (chairman) presiding.

IN RE THE MACAULEY CORRESPONDENCE.

SPECIFICATION NO. 13—continued.

The CHAIRMAN. You may proceed.

Mr. RALSTON. Mr. Chairman, purely as a preliminary matter, for preserving the record, I want to inquire if Mr. Howland has with him the Macauley correspondence and inclosures?

Mr. HOWLAND. Yes, sir.

Mr. RALSTON. If you have them, I will present them.

Mr. HOWLAND. They are in a file, if you please. There are some other matters in this file which I suppose are not to go in evidence; but copies can be made and substituted in the record if the committee wishes it.

Mr. GRAHAM. It was suggested that those papers be passed up to the chairman.

Mr. HOWLAND. First?

Mr. GRAHAM. First, for inspection.

Mr. HOWLAND. Very good.

Mr. RALSTON. I might add also, a matter not appearing in the record, that I have asked the chairman to summon Mr. Maurice A. Joyce, of this city, and, as I understand, that subpoena has gone out.

Mr. HOWLAND. Mr. Chairman, I hand to you a paper which may be marked—I do not know what you would call it——

Mr. RALSTON. No. 3, if you please.

Mr. HOWLAND. Exhibit No. 3, being the letter of A. P. Macauley to the President of the United States, and, No. 4, the reply of the Attorney General of the United States, together with certain printed matter which may be part No. 5. There apparently is a copy—No. 4 is a copy of Attorney General Wickersham's report to the President of May 10, 1912, on the Jones pardon, as the same was published in the American Federationist, of July, 1912, together with certain comments by some person unknown in connection with the article as printed.

Mr. RALSTON. I do not care for the comment, but I think the exhibits ought to be before the committee, and I think I ought to have an opportunity to see them.

Mr. HOWLAND. The committee has asked for them, and I have presented them, and they can do as they like. We have no objection whatever to their going in evidence [handing papers to the chairman].

Mr. RALSTON. Mr. Howland, let me ask you: This printed matter to which you call attention, I understand was inclosed in the letter of Mr. Macauley to the President?

Mr. HOWLAND. I understand so; yes.

Mr. CLASSON. Those are the inclosures Mr. Ralston means?

Mr. HOWLAND. Yes; they are the inclosures Mr. Ralston means.

Mr. CHANDLER. What do you mean by comments? Do you mean editorial comments in the American Federationist?

Mr. HOWLAND. Apparently; and there is a paragraph at the end of the Wickersham letter drawing conclusions.

Mr. CHANDLER. It was printed in the American Federationist and these comments were made?

Mr. HOWLAND. I understand so; yes.

Mr. CHANDLER. Presumably an editorial comment?

Mr. HOWLAND. Yes, sir.

Mr. RALSTON. I will say I do not think that has anything to do with the case—a mere comment.

Mr. CHANDLER. You have no objection to all this going in evidence, you say?

Mr. HOWLAND. For what it is worth. Our attitude, you understand, is not to make admissions or objections. We are at the service of the committee at all times.

The CHAIRMAN. This is the same letter, I suppose, of Attorney General Wickersham——

Mr. RALSTON (interposing). I have not been permitted to see it yet.

The CHAIRMAN (continuing). That has already been read in evidence, has it not?

Mr. RALSTON. It has been offered in evidence. I have not been permitted to see it.

Mr. HOWLAND. I object to the word "permitted"; we bring these in response to the request of the gentleman, voluntarily, for the use of the committee. I do not like to be reflected upon by the use of the word "permitted."

Mr. RALSTON. If you do not want to be reflected upon, why do you not let me see it?

Mr. HOWLAND. Because the committee asked me to hand it up to them.

Mr. FOSTER. Can not we let Mr. Ralston inspect them as soon as the chairman is through?

The CHAIRMAN. What I was asking is whether this letter of Attorney General Wickersham is the same as the one which was read into the record yesterday?

Mr. RALSTON. Yes.

The CHAIRMAN. Of course there is no use of burdening the record with that?

Mr. RALSTON. No.

The CHAIRMAN. Then the newspaper article that he offers in connection with it is about the only thing there is, outside of what is already in, is it not?

Mr. FOSTER. I suggest that Mr. Ralston could answer your question better if he is permitted to inspect it. You say, "That is all there is outside"; he has not seen it.

Mr. RALSTON. My hands are tied for the time being.

The CHAIRMAN. What part of this newspaper pertains to this particular matter? Have you read it?

Mr. RALSTON. I have not seen it.

The CHAIRMAN. You have a whole newspaper here of some kind.

Mr. RALSTON. I do not want to put any things in the record that do not pertain to this case. Let us understand that. [After examining papers.] Mr. Chairman, I think we will all agree, without any question or discussion, that the first three communications in this file——

Mr. HOWLAND (interposing). I did not have those considered.

Mr. RALSTON (continuing). Ought not to be considered.

Mr. HOWLAND. Ought not to be.

Mr. RALSTON. Ought not to be considered at all. Now, then, we first offer in evidence, unless it is considered as offered in evidence by Mr. Howland, the following letter.

Mr. HOWLAND. Oh, I am not offering evidence.

Mr. BIRD. You say, "considered as his offer in evidence"?

Mr. RALSTON. Yes; he asked that it be marked "5."

Mr. HOWLAND. Just for the purpose of identification.

Mr. RALSTON. Very well; we offer it in evidence.

The CHAIRMAN. What is it; to what does it relate?

Mr. RALSTON. The first is the letter from A. P. Macauley to the President, which reads as follows——

Mr. MICHENER. Just a minute. Is there a letter there from the Attorney General acknowledging receipt of these other letters?

Mr. RALSTON. Yes, sir.

Mr. MICHENER. And does that letter refer to the inclosures?

Mr. RALSTON. The letter refers to the inclosures, as you will find if I am permitted to read it.

Mr. MICHENER. One moment. The reason I ask that question is this: I can see no way by which under any rules of evidence those publications could be admitted unless it was on the theory that the Attorney General received that correspondence and acknowledged receipt of it and stated that he had full knowledge——

Mr. RALSTON. Yes.

Mr. MICHENER. Of the contents.

Mr. CHANDLER. What Attorney General is that, Wickersham or Daugherty?

Mr. RALSTON. Daugherty.

Mr. FOSTER. In other words, Mr. Daugherty's answer discloses knowledge on his part by knowledge of the inclosures?

Mr. RALSTON. Yes; by his acknowledgment of the inclosures of the letter.

Mr. GRAHAM. He does not mention the inclosures at all.

Mr. MICHENER. Can not we have the Daugherty letter read first?

Mr. GRAHAM. Yes.

Mr. RALSTON. I care nothing about the order of the reading except the order of time.

Mr. MICHENER. I was thinking about the question of evidence. The acknowledgment in the letter of Daugherty might make it admissible, otherwise it would not be admissible.

Mr. RALSTON. If there is any question on that point I will offer the carbon copy, in the file of the Attorney General's, of the acknowledgment of the Attorney General.

Mr. JEFFERIS. What exhibit is that?

Mr. RALSTON. This would be No. 4, I think, under Mr. Howland's numbering. At any rate, it is a carbon copy of the letter of October 1, 1921:

MR. A. P. MACAULEY,

*509 Leverton Building, Toronto, Canada.*

MY DEAR SIR: I beg to acknowledge receipt of your favor of the 17th, which has been referred to me by the President, in which you protest against the appointment of W. J. Burns as the Director of the Bureau of Investigation in this department.

I have been interested in reading your inclosures, which information I had before considering Mr. Burns's appointment. I have known Mr. Burns for many, many years, and am quite sure he will render me and the administration faithful and efficient service.

Very truly yours,

Then there is a blank for the signature and "Attorney General."  
The letter of Mr. Macauley is as follows:

509 LEVERTON BUILDING,  
*Toronto, Ontario, September 17, 1921.*

DEAR MR. PRESIDENT: As a citizen of the United States of America, I deem it advisable and of importance to lay a few documents before you pertaining to the W. J. Burns International Detective Agency and to W. J. Burns, who has, as I understand, been appointed to an important position under your administration, and that his appointment has created a great deal of comment throughout America. Among the documents there is a statement by ex-Attorney General George W. Wickersham, which could be verified by an interview with him. I have in my possession a great deal of other documentary evidence and articles pertaining to W. J. Burns and his agency which, if desired, I will forward to you.

The committee will note that that was not called for by the Attorney General.



The CHAIRMAN. You ought not to testify, but go on and give us what is in the record.

Mr. RALSTON (reading):

May I ask that you give this matter your earnest consideration?

A. P. MACAULEY.

HON. WARREN G. HARDING,

*President of the United States of America,*

*White House, District of Columbia, U. S. A.*

Mr. HICKEY. That was after the appointment was made?

Mr. RALSTON. That was after the appointment was made; but Mr. Daugherty acknowledged his full knowledge of the facts set out before he made the appointment; and, now, what are these facts? The exhibits show. The first is entitled——

Mr. HOWLAND (interposing). Are you making an argument?

Mr. RALSTON. Oh, no; I am continuing to read everything that relates to Burns.

Mr. GRAHAM. I desire to enter a protest against submitting on the record a newspaper article which was forwarded in that Wickersham letter. That is not the way to introduce any evidence or to create any impression in sustaining this specification No. 13.

The CHAIRMAN. Personally, I do not believe that a newspaper article should go into the record in this fashion, as it is not shown to have been brought to the notice of the Attorney General. No foundation.

Mr. RALSTON. May I say in brief, please——

The CHAIRMAN (interposing). I would rule that it is not admissible.

Mr. RALSTON. I would like to be heard before the chairman rules it is inadmissible. I think I am entitled to that.

Mr. GRAHAM. Not necessarily, if the chairman has made up his mind.

Mr. RALSTON. I take it that the committee does not propose to act in an arbitrary manner; and there was a ruling that these inclosures——

The CHAIRMAN (interposing). I have examined them, and they seem to be just newspaper articles collected and sent to the Attorney General. They do not prove anything against Mr. Burns—simply newspaper accounts.

Mr. RALSTON. The chairman has argued it; I have not.

Mr. GRAHAM. After the appointment, also?

Mr. RALSTON. After the appointment, also, but directly relates back to the Attorney General, and it is shown that he was cognizant of all the things set out in these articles. Now, what was set out in them?

Mr. GRAHAM. This is simply a letter such as any busy man would write—"I have passed on all this matter." It does not show that he did in fact read that newspaper article or knew anything about it.

Mr. RALSTON. That may be your interpretation of it; mine is different.

Mr. GRAHAM. I think it is the interpretation of common sense.

Mr. RALSTON. Very well; I may be lacking in common sense.

Mr. GRAHAM. That may be

Mr. FOSTER. May I ask that he read again that section of Mr. Daugherty's letter referring to the acknowledgment?

Mr. GOODYKOONTZ. It is set out in the printed article.

Mr. RALSTON. Yes. Now, what was the information he had? I want to show to this committee exactly what that information was. What was the information contained in the inclosures?

Mr. GRAHAM. My contention goes deeper than that; that having, as he said in this letter, known this man for years and years and knew him personally and knew his integrity, believing it, at least, that that letter means no more than that he had disposed of the matter and decides that a mere newspaper article in and of itself is not presenting any new facts to him.

Mr. RALSTON. What were the facts which were presented to him by that newspaper article?

Mr. GRAHAM. You have already proven them.

Mr. RALSTON. No; I beg your pardon. There are lots of additional facts contained here, which are not contained and had no relation to the Wickersham matter, and which prove or tend to prove continuous indecent conduct on the part of Burns from 1905 up almost to the date of his appointment.

Mr. GRAHAM. That is your characterization; but I want to say for Mr. Burns that he has denied the whole story, and from my knowledge of Mr. Burns I would believe him in preference to those articles.

Mr. RALSTON. That is a matter of choice. By the time we are through with Burns I think you will change your opinion.

Meanwhile I demand, as far as I have a right to demand, the opportunity of reading and offering these things in evidence which Mr. Daugherty said he was acquainted with before he made the appointment.

Mr. FOSTER. Would the chairman consent to this proposition? You, Mr. Chairman, and Mr. Graham have read this. Why can not we take this under advisement and pass on them later and let some of the rest of us read them?

The CHAIRMAN. All right.

Mr. FOSTER. In view of this sentence in Mr. Daugherty's letter. Present it later. Is that all right, Mr. Ralston?

Mr. RALSTON. It is not all right.

Mr. FOSTER. What we would like, before the chairman passes on it, would be to arrange for the other members of the committee to examine the papers.

Mr. RALSTON. I think this: I think that there should be no secret proceedings about anything in this case.

The CHAIRMAN. That is not "secret proceedings."

Mr. RALSTON. I beg your pardon.

The CHAIRMAN. That is not a secret proceeding for us to read it.

Mr. RALSTON. It is secret, so far as people outside of the members of the committee are concerned; it is indirectly holding a secret session.

Mr. BIRD. If Mr. Ralston's position were sustained, no member of this committee would have a right to examine papers; and if that is his attitude, I am quite willing to have the chairman rule it out.

Mr. RALSTON. I would be very glad to have you see it.

Mr. CHANDLER. May I ask Mr. Howland, representing the Attorney General, if he did not object to this going in; do I understand you correctly?

Mr. HOWLAND. I do not think, Mr. Chairman, that we are here objecting technically. We are not standing on our strict legal rights here, because we refuse to be put in the position by this gentleman and his client of keeping anything from the consideration of this committee that they want.

Mr. CHANDLER. Mr. Howland, I asked you a question: If a few minutes ago you stated you would not object to this going in? I just wanted to know if I got you clearly.

Mr. HOWLAND. I make no objection.

Mr. GRAHAM. But you made no confession?

Mr. HOWLAND. I made no confession.

Mr. GRAHAM. You are simply standing here to give whatever information the Attorney General's documents call forth?

Mr. HOWLAND. Absolutely.

Mr. MICHENER. My position is—and I want it understood—that as a matter of evidence this printed article is not admissible unless the Daugherty letter is admitted. If the Daugherty letter is admitted, then as a matter of evidence it would necessarily follow that the inclosures, whatever they are—and I suggest that to Mr. Graham, whom, I think, is familiar with evidence—that would naturally follow, and we can not get away from it.

Mr. GRAHAM. I think the whole subject ought to be excluded, because it comes after the appointment and has no relevancy.

Mr. MICHENER. Mr. Daugherty says that information was in his possession before he appointed Mr. Burns. All I have in mind is to find out what that information is. That, as one member of the committee, is the way I feel about it.

Mr. FOSTER. That is the reason I suggested that it be taken under advisement until the other members of the committee have an opportunity to go over it.

The CHAIRMAN. There is no necessity of our continuing this discussion. If the committee desires to look at it, it can do so to determine whether it is proper to go in; if it does, it will be printed in the record and will be public; if the committee thinks that it is of such a character that it ought not to go in, of course they would exclude it.

Mr. RALSTON. I do not know that I quite catch the chairman's ruling.

The CHAIRMAN. I say, for the time being it is excluded, with the understanding that the committee will take it up and consider it after it has a chance to examine it and determine whether it is proper evidence or not.

Mr. RALSTON. It is excluded, then, without argument from me.

The CHAIRMAN. You have argued it already.

Mr. RALSTON. No; I beg your pardon; I have not argued anything contained in these documents.

The CHAIRMAN. It is a question whether you ought to argue it for the purpose of getting it in the record. I would hold that it is not necessary. Go on with your case and prove something else, and we will determine for ourselves later on whether it is admissible, and if we do determine it is admissible then it will go into the record.

Mr. RALSTON. I call attention to the fact that it is done and argument refused, placed upon the nature——

The CHAIRMAN (interposing). In matters of this kind we can not stop and argue for an hour over any particular point.

Mr. RALSTON. I had not any desire to stop and argue an hour. My breath would not hold out that long on this subject.

The CHAIRMAN. You have now argued nearly that long.

Mr. RALSTON. I object, therefore, so far as I can object, to the ruling and shall insist subsequently upon my rights in any way that I can make them available, even if there has to be a call from the House of Representatives to produce the evidence.

Mr. YATES. Could that go into the record?

Mr. GRAHAM. Is that meant as a threat to the committee, sir?

Mr. RALSTON. I did not threaten the committee.

Mr. GRAHAM. If that is your course, I would for one decline to hear you further as counsel in this case. I do not propose to have this committee threatened.

Mr. YATES. It was an absolute threat.

Mr. FOSTER. Let us go ahead with the case.

Mr. HOWLAND. Just a moment, Mr. Chairman. You will recall upon cross-examination of Mr. Finch yesterday I asked him to produce—being unable to remember the substance of the letter—the letters of Judge Gilbert, the trial judge who presided at the trial of Mr. Jones, who was pardoned, out of which all of this matter grew. I have these letters in my possession now, and I would like to produce them. There were three of those produced from the file, and the whole file was produced yesterday. These are special records, and I would like to read them into the record as a part of the permanent record.

Mr. RALSTON. You have all the letters from Judge Gilbert?

Mr. HOWLAND. Yes; three of them.

The CHAIRMAN. You may read them.

Mr. HOWLAND. Yes; as a part of Finch's cross-examination. The member of the committee also asked for the production of these letters.

Mr. GRAHAM. I called for the production and asked that they might be read.

Mr. FOSTER. Also the letter of Mr. Heney was called for.

Mr. HOWLAND. The letter of Mr. Heney is in the form of a report, which we have. That is a part of this great bundle of records which we dug out, at the disposition of the committee.

Mr. RALSTON. Then, Mr. Chairman, if we are to have part——

Mr. HOWLAND (interposing). It is all in.

Mr. RALSTON. I beg pardon. If we are to have part of the records of the Department of Justice on that proposition, and that part on one side, let us have all the detailed reports of Mr. Finch on which his final report was based.

Mr. HOWLAND. They are all in evidence.

Mr. RALSTON. They are not before the committee. You are proposing to put a part of it before the committee which is immaterial; I am going to ask, therefore, that the department be asked to send back here the several, the original, and two supplemental reports of Mr. Finch upon this matter. They are just as material as these scraps of evidence.

Mr. GOODYKOONTZ. Mr. Ralston, yesterday before noon it was said that at the noon hour or at the recess you would confer with Mr. Finch and you would be permitted to examine all the papers and you would select therefrom such as you wished to go into the record. That you did, and when you had covered certain documents yesterday you stated that you had no further use for the papers and the rest could go back to the Department of Justice.

The CHAIRMAN. At the same time I might supplement that by saying that it was the understanding at the time that these letters of the judge be brought in.

Mr. HOWLAND. Certainly.

Mr. GOODYKOONTZ. And he agreed to it.

The CHAIRMAN. That was agreed to, and last night it was agreed that Mr. Finch might go back to the department and take his records to await further calls for them.

Mr. RALSTON. Nevertheless, I submit the motion, which the committee may overrule if it pleases, that if the letters of Mr. Gilbert—Judge Gilbert—are to be read, then the original and the two supplemental reports also be placed on the records of this committee.

Mr. JEFFERIS. Mr. Chairman, I think it was understood yesterday—

Mr. BOIES (interposing). Better take up the questions when you reach them. Here is some evidence offered now. If this lays the foundation giving you the right to introduce something else, take it up when that time comes.

Mr. RALSTON. I am taking time by the forelock, if you please, perhaps.

The CHAIRMAN. Let us have one thing at a time.

Mr. JEFFERIS. Mr. Chairman, I think this matter was really part of the cross-examination yesterday that they could not find at that time.

Mr. HOWLAND. Exactly.

The CHAIRMAN. I think that was the understanding yesterday, and we are simply carrying out what was agreed to at that time. You may read the letter.

Mr. HOWLAND. This may be marked numeral what—six? Well, no matter, the document will identify itself:

UNITED STATES CIRCUIT COURT.

NINTH JUDICIAL CIRCUIT,

JUDGE'S CHAMBERS,

Portland, Oreg., May 1, 1911.

To the ATTORNEY GENERAL,

Washington, D. C.

SIR: It has recently come to my notice that in connection with the application of Willard N. Jones for a remittance of a portion of his sentence, changes have been made that the jury lists from which the jury which tried his case was drawn were made up after men had been sent out into the country to ascertain the inclinations and views of those who were to be selected for jury duty, and that after the list was made it was submitted to officers of the Government or their employees or other persons for their revision before the names were placed in the jury box. If such charges have been made and any kind of evidence has been offered to support them, the subject is one upon which I wish to be heard.

During the whole of the time since I was appointed to the bench I have taken great pains to secure efficient, intelligent, and competent jurors for the trials of cases in this circuit court. All the orders on which names were placed



in the jury box from which juries were drawn in the land-fraud cases were made by me. In addition to that, I gave special instruction to the clerk and the jury commissioner to select men of good standing and character, irrespective of their political views. I was advised of each step taken by the clerk and the commissioner in making the jury lists. I know of my own knowledge that no men were sent out to ascertain the views or inclinations of any of the men so selected.

The lists of men residing outside of Multnomah County, the county in which Portland is situated, were obtained by letters sent by the clerk to reputable men of good standing in each of the counties, aided by a list of men made by the jury commissioner in his own county, at Salem, where he resides. The lists of names of residents of Multnomah County was made by the clerk and his deputy from the tally roll of the county. After the lists were obtained the jury commissioner came to Portland, and he and the clerk went over the lists and revised them and placed the selected names in the box. I understand that it is said that a typewritten list of such names was recently found in the district attorney's office here, on which were erasures of names and pencil memoranda. I do not know from whom or how such lists were obtained. I can only assert my profound conviction that they were not furnished by the clerk or by the jury commissioner. The clerk of this court, the late Maj. J. A. Sladen, a retired Army officer, was a man of the highest character and standing, universally respected by his former associates in the Army and by the people of this city, who have known him for many years. He was a close personal friend of the late Gen. O. O. Howard. Most unfortunately he died in January of this year. Otherwise I am convinced that these slanderous charges would never have been made. Early in the prosecution of the so-called land-fraud cases he came to me and informed me that counsel both for the Government and for the defendants had demanded an inspection of his jury list. I advised him to deny their demands, and I am sure he complied with my instructions.

Respectfully yours,

WM. B. GILBERT.

January 2 is the next chronological one, from the same judge's chambers:

JANUARY 2, 1912.

JAMES A. FINCH, ESQ.,

*Pardon Attorney, Washington, D. C.*

DEAR SIR: I have just received your letter of December 28. I made no order delaying the time for filling the jury box in pursuance of the order which I had made on August 10, 1905, directing the clerk and the jury commissioner to fill the jury box and designating the counties from which the names should be selected. When the order to fill the box was made it was understood that the grand jury was to be drawn on the following Tuesday, August 15; but no order was made to that effect. For some reason I deferred the drawing of the grand jury until Thursday, the 17th. I do not now clearly remember what the reason was. My best recollection is that it was because I was to be out of town. I can, however, state distinctly that the delay was not made at the suggestion of anyone connected with the prosecution of any cases pending before the court. I have asked Mr. Marsh, clerk of the recent circuit court, who was Captain Sladen's deputy in 1905, to make me a statement of the facts as they appear in his records, and of his own knowledge, and he has written a letter to me which I inclose herewith.

Marsh's letter, I think, is in that file of documents that were presented here yesterday.

I can vouch for the high standing and character of Mr. Marsh, as well as of the late Captain Sladen. You will notice that in the copy of the letter of Captain Sladen to Mr. Bush, of date August 11, 1905, he says: "So, if you will come down next Thursday instead of Monday, we will then draw the jury in accordance with the order of the court." I hardly need to point out that what Captain Sladen meant there is that he and Mr. Bush would then put the list of jurors in the jury box, instead of drawing the jury, and that what he says in the preceding sentence, "fixing Thursday the 17th instant for drawing the jury," refers to drawing the grand jury.

On May 1, 1911, I wrote a letter to the Attorney General, and, as you possibly may not have that letter before you, I send herewith a copy of it. Any further statement or explanation which I can afford, I will be glad to give you.

Respectfully yours,

WM. B. GILBERT.

The next letter from Judge Gilbert is January 17, 1912, from the same judge's chambers:

JANUARY 17, 1912.

JAMES A. FINCH, Esq.,

*Pardon Attorney, Washington, D. C.*

DEAR SIR: I do not know that your favor of the 8th instant calls for a further statement from me, but I wish to say that when I wrote "I know of my own knowledge that no men were sent out to ascertain the views or inclinations of any of the men so selected," I referred to men being sent out by or with the consent of the clerk or jury commissioner, or upon whose report they acted in any way. If from some source or by some method unknown to me, Mr. Burns or his agents obtained copies of the lists of names of men intended for the jury box, which were in the possession of the clerk or the jury commissioner before the jury box was filled, and agents were sent out to obtain information about the men named on those lists, I am still certain of this, that the clerk and the jury commissioner accepted no such information and heeded no advice from any such source.

Sincerely yours,

WM. B. GILBERT.

Now was there something else I was to produce in the form of the Heney report?

Mr. GOODYKOONTZ. I called for that.

Mr. HOWLAND. The Heney report was called for?

Mr. JEFFERIS. Mr. Goodykoontz wants to see it.

Mr. HOWLAND. Now, if the committee please, this is a very long report and it is in evidence. It is among the files of the department, on which all these matters are based, and is one of the documents there. I was asked to produce it.

Mr. FOSTER. I would like to see it.

Mr. HOWLAND. I am going to hand it up to the chairman for inspection, not offering it at all, except calling specific attention to it, as it was demanded by the committee. It is in the files of the department.

The CHAIRMAN. It will be left here, then, for the committee?

Mr. HOWLAND. Yes; I will leave it with the committee, certainly, so that they may examine it later.

Mr. YATES. What is it you are speaking about?

The CHAIRMAN. The Heney report.

Mr. HOWLAND. The report of Mr. Heney, who was the special United States attorney in charge of the Jones case—in charge of the prosecution.

Mr. HERSEY. The report made to whom?

Mr. HOWLAND. The report made to Mr. Finch here, the Attorney General's—made to the Attorney General, of course. That is who it is made to.

Mr. HERSEY. What was the date of that report?

Mr. GOODYKOONTZ. May 2, 1911.

Mr. GRAHAM. Mr. Howland, could you give me information on certain dates? We have had read here records which showed that the trial of Jones took place in 1907.

Mr. HOWLAND. That is an error, I take it. It took place in 1905. I made that error in my statement.

Mr. GRAHAM. It was 1905?

Mr. HOWLAND. Yes.

Mr. GRAHAM. Now, Jones was sentenced; afterwards, and before any question about the jury matter came up, his sentence was commuted to four months.

Mr. HOWLAND. Yes.

Mr. GRAHAM. Am I right about that?

Mr. HOWLAND. Four months and the money fine.

Mr. GRAHAM. The money fine—well, that is immaterial. Now, he would be discharged out of custody in four months?

Mr. HOWLAND. Yes.

Mr. GRAHAM. Provided the fine had been paid?

Mr. RALSTON. Execution was held up.

Mr. HOWLAND. Execution was held up.

Mr. GRAHAM. Was he in prison?

Mr. HOWLAND. No; not a day.

Mr. GRAHAM. What I am curious to know, simply as an item of information here—my colleague and myself did not understand, owing to these dates—this investigation about the jury took place in 1912?

Mr. HOWLAND. Yes, sir; 1911 it started, six years after.

Mr. GRAHAM. Six years afterwards, when this man Jones was out of prison, and at that time a pardon was sought for him.

Mr. HOWLAND. Yes, sir.

Mr. GRAHAM. That is all.

Mr. HOWLAND. Now am I to understand that I am to furnish these to the judge?

Mr. GRAHAM. That is sufficient for me.

Mr. RALSTON. I think, Mr. Chairman, that there is another Gilbert letter written some time from the State of Washington, probably not introduced. I would like to call for that.

Mr. HOWLAND. Yesterday you said there were two Gilbert letters. Now you claim that there are four. I will make another search, gentlemen of the committee, and see whether I can find another Gilbert letter.

Mr. GRAHAM. You have furnished all that you could find so far?

Mr. HOWLAND. Yes, sir.

Mr. RALSTON. I will call Mr. Gompers. Mr. Gompers, will you take the stand, please.

(Whereupon Samuel Gompers, president American Federation of Labor, was called as a witness and the following proceedings were had:)

#### TESTIMONY OF MR. SAMUEL GOMPERS, PRESIDENT OF THE AMERICAN FEDERATION OF LABOR.

The CHAIRMAN. Mr. Gompers, hold up your right hand and be sworn.

Mr. GOMPERS. I prefer to affirm.

Mr. GRAHAM. It is not a matter of preference. Do you have conscientious scruples against taking an oath?

Mr. GOMPERS. I desire to affirm, conscious of the responsibility that goes with the affirmation.

The CHAIRMAN. Mr. Gompers, you solemnly affirm that you will tell the truth, the whole truth, and nothing but the truth relative to the cause now on hearing, so help you God?

Mr. GOMPERS. I so affirm.

Mr. RALSTON. Mr. Gompers, you will please state your occupation in life and what it has been for the past 40 years or so.

Mr. HOWLAND. I object to a life's history. I want to get right to the point.

Mr. GRAHAM. I do not think that it is necessary. Everybody knows Mr. Gompers.

Mr. RALSTON. If the committee will take judicial notice as to that we will pass on to the next question.

Mr. Gompers, about the latter part of July, 1921, did you have any communication with the office of the Attorney General, particularly Attorney General Daugherty?

Mr. GOMPERS. Yes, sir.

Mr. RALSTON. I wish that you would state what that was and what resulted from it. State it fully in your own language.

Mr. GOMPERS. About midday, I think, July 27, 1921, a telephone message came to me from the Attorney General, Mr. Daugherty, asking me whether I could come to his office, as he desired to talk over a matter with me of some considerable importance. I replied that I would get over to the department and to his office as soon as I possibly could, that I would get a taxicab to take me over. I think it must have been about 20 minutes after, I reached his office, and was immediately ushered in, or, rather, into an anteroom and immediately ushered into his office.

Mr. JEFFERIS. Will you kindly speak up a little louder?

Mr. MICHENER. We can not hear anything here.

Mr. GOMPERS. Shall I repeat?

Mr. JEFFERIS. No; go ahead.

Mr. GOMPERS. Mr. Daugherty greeted me very cordially, as he has always done since he was inducted into the office, and I reciprocated by a cordial greeting.

He called my attention to some of the statements which had come to him of my criticism of the appointment of Mr. Burns as the chief of a new bureau that he intended to create. He spoke of the desire to coordinate the various branches of the Secret Service and the intelligence bureaus of the various departments under one head, so that there might be concentration of effort and avoid what he called "snooping" of men upon each other, and upon working upon parallel or opposite lines to the ascertainment of information.

He said that he knew Mr. Burns and thought well of him, and expressed the thought that my criticism of Mr. Burns might not be entirely justified.

I had with me a copy of the letter or report made by Attorney General Wickersham to President Taft in the Jones case. I submitted this document to him in typewritten form. He glanced over it, read some portions—did not read it all—but I pointed out the several parts quoted by Mr. Wickersham in his letter to President Taft.

I can not exactly recall the conversation which ensued between the reading of those portions of Mr. Wickersham's letter, but in a few

minutes he pressed a button, to which a young man responded, when Mr. Daugherty asked him to look up and see whether there were any documents on file in reference to the Jones case and report made by Attorney General Wickersham to President Taft. The young man left the room for probably a minute or two, and returned to the room with a printed document, it seemed to me, in pamphlet form. Mr. Daugherty looked through it, and coming to a part of the printed document, took the typewritten copy which I had given him before and compared them, and he then said no more upon that subject.

I made the remark to him that in view of the fact that his predecessor, the Attorney General of the United States, had made a report of the character, as shown by this typewritten copy of Mr. Wickersham's report, and the pardon which President Taft had given to the man convicted under the circumstances, and other conditions set forth in the report, that it would be a public scandal and would bring discredit to the department and to the Government of the United States if any such a man was appointed to such an important post as it was proposed to appoint Mr. Burns to, and I as a man and citizen, I protested against any such appointment.

The CHAIRMAN. Do you have anything further on that subject?

Mr. GOMPERS. Not on that point. That I think states as concisely as I can the interview which—no, may I supplement by saying this: That I informed Mr. Daugherty the way I obtained a copy of that report, and it was something like this: I said that the day before a holiday. I believed it was the day before Memorial Day—Decoration Day—that I was riding on a train to New York, fulfilling an engagement to deliver an address on Memorial Day, and on the train, and in the car in which I was riding, I saw Mr. George Wickersham, the Attorney General of the United States, with whom I had an acquaintance, and I think a personal friendship for some years. We engaged in conversation, and I called the attention of Mr. Wickersham to the published newspaper, meager, reports that the President of the United States had pardoned Mr. Jones, and upon some ground which the newspapers stated was an irregularity or irregularities. Mr. Wickersham said, "Yes; the newspapers could not carry reports in detail of that which was ascertained," and which he, as Attorney General, had presented to the President of the United States. I asked him whether it would be possible to obtain a copy of that report. After a while he said, "It is a public document, and I do not feel that I would be authorized or warranted to let you have a copy of the report, but I have no doubt, if you made the request of the President that he would, or he might, furnish you with a copy."

Upon my return to the office of the American Federation of Labor in Washington, several days after, I think on June 10, I addressed a letter to the President asking whether I might, if compatible with public interests, be furnished with a copy of that report made by Attorney General Wickersham. I received a reply from the President, I think, dated the following day, June 11, 1912, inclosing a copy of that report.

The CHAIRMAN. Do you have anything further?

Mr. GOMPERS. Yes, sir.

Mr. RALSTON. I think that is all.



The CHAIRMAN. Mr. Howland, do you want to ask any questions?

Mr. HOWLAND. Yes. Why did you want that report, Mr. Gompers?

Mr. GOMPERS. As a citizen and as a man interested——

Mr. HOWLAND. Why were you interested in this particular report?

Mr. GOMPERS. Because it contained irregularities upon which a man was convicted, and upon what was alleged to be, or charged to be, jury fixing, and subordination of perjury.

Mr. HOWLAND. By Mr. Burns?

Mr. GOMPERS. Or any other man of like type.

Mr. HOWLAND. In this particular case, it was Mr. Burns that aroused your interest?

Mr. GOMPERS. Not more than any other man.

Mr. HOWLAND. While you were down at Mr. Daugherty's office, you called his attention, or he sent and got the report of Attorney General Wickersham and read it and you discussed it?

Mr. GOMPERS. I do not know that we discussed it. He read it.

Mr. HOWLAND. He read it?

Mr. GOMPERS. In part.

Mr. HOWLAND. You protested against the appointment of Mr. Burns?

Mr. GOMPERS. Yes, sir.

Mr. HOWLAND. And the document on which you based your protests was the report of Attorney General Wickersham in the Jones case?

Mr. GOMPERS. Yes, sir.

Mr. HOWLAND. All you knew about it was what you read in Attorney General Wickersham's report, wasn't it?

Mr. GOMPERS. Yes, sir.

Mr. HOWLAND. How long have you known Mr. Burns?

Mr. GOMPERS. I do not know him even up to to-day.

Mr. HOWLAND. Mr. Burns was engaged to assist the Government in the McNamara case, wasn't he?

Mr. GOMPERS. I think so; yes, sir.

Mr. HOWLAND. You took a decided interest in those cases for the McNamaras, didn't you?

Mr. GOMPERS. No, sir. I took an interest to see that men would have a fair trial, no matter what they were charged with—what charges were made against them.

Mr. HOWLAND. You took the position that they were not guilty?

Mr. GOMPERS. I believed them not guilty, and so stated that I believed them not to be guilty.

Mr. HOWLAND. And they afterwards confessed?

Mr. GOMPERS. They afterwards confessed, and then I believed them, too.

Mr. HOWLAND. How is that?

Mr. GOMPERS. And then I believed them.

Mr. HOWLAND. So Mr. Burns's activities there did not arouse any antipathy on your part?

Mr. GOMPERS. It aroused my deep interest.

Mr. HOWLAND. Well, you protested against his appointment as Chief of the Bureau of Inspection; and I will ask you if you wrote any letters or advised the President in favor of the appointment of Mr. Daugherty as Attorney General of the United States?

Mr. GOMPERS. I did not, sir.

Mr. HOWLAND. Did you take occasion to suggest to the President of the United States that he should not be appointed Attorney General of the United States?

Mr. GOMPERS. I did not, sir.

Mr. HOWLAND. When did you suggest to Mr. Ralston, your attorney here, that these impeachment proceedings be started?

Mr. GOMPERS. I never knew that the impeachment resolutions were to be introduced until I read them in the newspapers, sir.

Mr. HOWLAND. If Mr. Ralston has said to the committee here, Mr. Gompers, that this was done at your request——

Mr. RALSTON (interposing). I think that you are wrong.

Mr. HOWLAND (continuing). And that he represented you in this matter, what would your answer be?

Mr. RALSTON. I beg your pardon. I did not say that the impeachment proceedings were started at Mr. Gompers's request. When they started, I personally was 3,000 miles away. Mr. Howland is absolutely on the wrong lead.

Mr. GOMPERS. I repeat, sir, if I may, that I did not know that impeachment proceedings were to be brought against Mr. Daugherty, or that a resolution to that effect had been introduced in the House of Representatives, until after I read them in the newspapers.

Mr. HOWLAND. Does Mr. Ralston represent the American Federation of Labor in this proceeding?

Mr. GOMPERS. He does.

Mr. HOWLAND. He does. When did you first employ him to represent the American Federation of Labor in this proceeding?

Mr. GOMPERS. I would like to answer as definitely——

Mr. HOWLAND (interposing). Answer the question. I am asking for a date.

Mr. GOMPERS. I will try to give it to you as accurately as I possibly can.

Mr. HOWLAND. That is all I ask.

Mr. GOMPERS. And if you will permit me to answer as best I can, there is not anything that I desire to hide or have any intention to. The executive council of the American Federation of Labor met in our headquarters here, I think, beginning November 14, last month; and during our week's session the question of the impeachment resolution was discussed, and particularly two phases of the resolution——

Mr. HOWLAND (interposing). I do not care about that; fix the date.

Mr. GOMPERS. I will try to give you the date, if you will give me the chance. One was——

Mr. HOWLAND (interposing). I do not care about the phases of this injunction. I want the date when you employed Mr. Ralston.

Mr. GOMPERS. During the conclusion of the week's session of the executive council, by direction of the executive council, I communicated with Mr. Ralston and asked him to represent the American Federation of Labor in the impeachment proceedings, in two phases. That was about the 22d of November.

Mr. HOWLAND. About?

Mr. GOMPERS. I can not tell you exactly. I am trying to give you as full information as I can.

Mr. HOWLAND. Why did you publish these Burns charges in the American Federation of Labor, with editorial comment, immediately after you got them or shortly after you got them?

Mr. GOMPERS. I understood you to say that it was written by some unknown person. I am the person that wrote it.

Mr. HOWLAND. Are you the person that wrote it?

Mr. GOMPERS. Yes.

Mr. HOWLAND. Then I apologize; you are well known.

Mr. GOMPERS. Thank you.

Mr. HOWLAND. Why did you publish it in the American Federation of Labor immediately after you got the charges?

Mr. GOMPERS. To expose a man who had been guilty of so great a wrong.

Mr. HOWLAND. That answers the question exactly. And all the information you had upon the subject was contained in the report of Attorney General Wickersham, without any knowledge whatever of the facts?

Mr. GOMPERS. When the Attorney General of the United States makes an official report to the President of the United States, and the President pardons the man convicted upon that official report, that seems to me to be pretty good information.

Mr. HOWLAND. All right; that is all.

Mr. RALSTON. Mr. Gompers, you have been asked if all the information you had with regard to Mr. Burns was contained in that official report of Mr. Wickersham; is that correct?

Mr. HOWLAND. He answered that before.

Mr. RALSTON. Did you ever see this document before? [Handing red bound book to witness.]

Mr. GOMPERS. (examining book). Yes; but I received this after my protest to Mr. Daugherty, and I did not know of the existence of this book.

Mr. RALSTON. You know what it is?

Mr. GOMPERS. I know what it is.

Mr. YATES. Well, I do not know what it is.

Mr. RALSTON. Well, this is a narrative of offenses committed or charged against William J. Burns, which is at the service of the committee if the committee desires it.

Mr. HERSEY. By whom was it written?

Mr. RALSTON. It is from the newspapers and from official records of all kinds, in Canada, New York State, Georgia, and elsewhere.

Mr. HERSEY. Is it an official document of any kind?

Mr. RALSTON. Copies of official documents, for the most part.

Mr. HOWLAND. It is published by Macaulay; why did you not tell the committee that?

Mr. RALSTON. Yes, it is.

Mr. BIRD. Where are those charges pending?

Mr. FOSTER. We are going into something now that Mr. Gompers himself says was not called to his attention until after the appointment of Mr. Burns; are we going into an investigation of that?

Mr. CHANDLER. I did not understand that he had offered that in evidence.

Mr. MONTAGUE. They are not asking for that.

Mr. FOSTER. I am not objecting to your answering the question; but I called attention to the fact that Mr. Ralston is asking about something that we are not now investigating.

Mr. RALSTON. I understand.

Mr. BIRD. Mr. Ralston, what is the date of that book?

Mr. RALSTON. Toronto, March 13, 1917, relating to a number of things that——

Mr. GRAHAM (interposing). Well, we do not want you to state the contents of that paper; you ought not to state the contents of that paper; it is not before the committee.

Mr. RALSTON. I simply wanted to answer the question.

The CHAIRMAN. What more have you got?

Mr. THOMAS. Well, Mr. Gompers, was this interview that you had with Mr. Daugherty concerning Mr. Burns in Mr. Daugherty's office—did that take place before or after Mr. Burns was appointed?

Mr. GOMPERS. Before.

The CHAIRMAN. That is all, so far as Mr. Gompers is concerned.

Mr. GOMPERS. Am I excused?

The CHAIRMAN. Call your next witness, Mr. Ralston.

Mr. RALSTON. Mr. Wickersham, will you kindly take the stand?

#### TESTIMONY OF HON. GEORGE W. WICKERSHAM, OF NEW YORK CITY.

(The witness was duly affirmed by the chairman.)

Mr. WICKERSHAM. Being a Quaker, I will affirm.

Mr. RALSTON. General, you were the Attorney General of the United States during the four years of the Taft administration, were you not?

Mr. WICKERSHAM. I was.

Mr. RALSTON. As Attorney General, was your attention called to what became known as the Jones pardon case from Oregon?

Mr. WICKERSHAM. It was.

Mr. RALSTON. Who first called your attention to it; do you remember?

Mr. WICKERSHAM. No; I do not recall.

Mr. RALSTON. Did you cause an examination to be made in that case into the facts surrounding it, the Jones case?

Mr. WICKERSHAM. An examination was made by the pardon attorney. Probably it was originated by him and brought to my attention afterwards; whether that was the case or it came first to me, I do not now recall.

Mr. RALSTON. Did you give it your special attention at the time?

Mr. WICKERSHAM. I gave it my very careful attention.

Mr. RALSTON. Did you go over it with the pardon attorney, Mr. Finch?

Mr. WICKERSHAM. I did.

Mr. RALSTON. Did you outline to him what, in your opinion, should be the general nature of the report upon the subject?

Mr. WICKERSHAM. No; I do not think so. I think he brought me his outline in the first instance; that would be the usual course of procedure, and I suppose it was in this case.

Mr. RALSTON. Did you correct it, or give it your personal examination?

Mr. WICKERSHAM. I went over the report very carefully. I personally examined all of the documents referred to in the report. Before I completed the report—before I allowed the report to go out—I sent for Mr. Francis J. Heney, who had been the special attorney in charge of the prosecution of Jones, and submitted the report to him.

I directed that Mr. Burns be sent for. I never saw Mr. Burns. I was told that he once called at the department, in my absence, and finding that I was absent, left and said he would call again.

Mr. RALSTON. Did he ever furnish you with any explanation of the things charged against him?

Mr. WICKERSHAM. None whatever, except what was contained in the pardon attorney's files; and I do not recall now what that was; but whatever it was was in the files.

Mr. RALSTON. Did your report consequent upon this—

The CHAIRMAN (interposing). I do not suppose any of this would be competent unless you show that these facts were called to the attention of the present Attorney General before the appointment of Mr. Burns.

Mr. RALSTON. We have proven that by two witnesses.

The CHAIRMAN. No; you have simply proven that a report was made.

Mr. RALSTON. Yes.

The CHAIRMAN. That is all you have proven; but this is an entirely different proposition.

Mr. RALSTON. Yes; I think the committee ought to know the circumstances under which the report was made and that it did receive careful consideration.

The CHAIRMAN. The only purpose any of it has is to show that the Attorney General knew certain facts. Unless it is proposed to show he was familiar with those facts, I do not see what bearing it can have.

Mr. RALSTON. It is only upon the question of showing this matter did receive the careful consideration of the then Attorney General; that it was not a matter of hasty action, but a matter of thorough consideration.

The CHAIRMAN. If you are going to charge the Attorney General as acting simply upon a report—

Mr. RALSTON (interposing). Yes.

The CHAIRMAN (continuing). Unless you show he had knowledge of the method by which this report was gotten up—that is what you are trying to show now—it seems to me to be completely outside the issue.

Mr. RALSTON. I think he had a right to assume everything Mr. Wickersham testified to.

Mr. FOSTER. Then the testimony is not competent.

Mr. RALSTON. The testimony is competent, but I am going to follow the subject further.



Mr. Wickersham, I will ask you this question: Did you yourself call the attention of the present Attorney General to the Burns case?

Mr. WICKERSHAM. I called his attention to the case.

Mr. RALSTON. Before the appointment was made?

The CHAIRMAN. Do you mean President Taft?

Mr. WICKERSHAM. Oh, no; he asked me if I called the attention of the present Attorney General to the Burns case. I presume you mean the Jones case?

Mr. RALSTON. Yes; the Jones case, before the appointment was made?

Mr. WICKERSHAM. Whether it was before the appointment was made or not, I can not say; but, seeing that the appointment was likely to be made, I wrote to the present Attorney General and suggested, if he had that matter under consideration, before he made the appointment that he examine the record of the files of the department in the Jones pardon case, and told him that the pardon attorney, Mr. Finch, could no doubt furnish him with the record and all facts concerning it. That was all I did.

Mr. RALSTON. Was your letter acknowledged?

Mr. WICKERSHAM. It was not. At least I could find no reply, and I think it was not acknowledged.

Mr. RALSTON. Have you a copy of your letter to the Attorney General?

Mr. WICKERSHAM. I have.

Mr. RALSTON. Have you it with you?

Mr. WICKERSHAM. I have [producing paper].

Mr. RALSTON. That was mailed in due course?

Mr. WICKERSHAM. I presume so; I did not mail it; but I assume it was.

Mr. MICHENER. Just a minute. Mr. Ralston, do you contend that that would be admissible until you show that it came to the knowledge of the Attorney General?

Mr. RALSTON. I contend, as a lawyer, if it went to him in due course of the mails, it is up to him to show whether he received it or not. And I will at this time, if there is any question about it, call on Mr. Howland to produce the original.

Mr. MICHENER. Then, your contention is that if you write a letter to a man stating certain things and then undertake to convict him of the commission of a crime, that you make a prima facie case by showing the dropping of the letter in the mail box, and that that is binding on him?

Mr. RALSTON. No; it does not bind him, because he could come back and say he never received it.

Mr. FOSTER. Did you understand Mr. Wickersham to say he did not know whether it was mailed? He said he signed it in the usual course in his office. In any case, would you not have to prove the mailing of the letter before you can assume its arrival?

Mr. RALSTON. If it is delivered to the mails, it is a presumption that it went through the mails.

The CHAIRMAN. Unless further foundation is laid for it, I do not think it is competent.

Mr. MICHENER. I object, merely as a matter of evidence, to the introduction of it until it is shown that it came to Mr. Daugherty's attention. If it is shown, it is highly important.

Mr. GRAHAM. Mr. Wickersham said he did not know.

Mr. WICKERSHAM. All I can say is, I signed it and I threw it over onto the desk where I customarily hand letters to be attended to. After that, I do not know.

Mr. HICKEY. May I ask you, Mr. Ralston, if you have served notice on the Attorney General to produce the original?

Mr. HOWLAND. That is not necessary; we have offered to do that. Now, what is it you are requesting?

Mr. RALSTON. I want the letter of Mr. Wickersham to the Attorney General dated March 21, 1921.

Mr. HOWLAND. Very well, it is not in issue here at all. We will admit Mr. Wickersham objected to Mr. Burns's appointment.

Mr. RALSTON. That is all I have to say.

Mr. HOWLAND. Under those circumstances, is it necessary to produce the letter? Do you want the letter?

Mr. RALSTON. I do want the letter.

Mr. HOWLAND. All right.

Mr. RALSTON. We want to introduce it in evidence as to its contents.

The CHAIRMAN. Do you want to ask the witness any questions?

Mr. HOWLAND. Mr. Wickersham, Mr. Francis J. Heney had charge of certain cases in the State of Oregon during your term as Attorney General or previous to your term?

Mr. WICKERSHAM. Previous.

Mr. HOWLAND. Under the Roosevelt administration?

Mr. WICKERSHAM. Yes.

Mr. HOWLAND. And there were certain convictions had in those cases in the State of Oregon, among them Mr. Jones—I have forgotten his initials?

Mr. WICKERSHAM. Willard N. Jones.

Mr. HOWLAND. And they were obtained in 1905 or thereabouts?

Mr. WICKERSHAM. I do not recall the exact date, but I suppose around 1905 or 1906.

Mr. HOWLAND. Do you recall whether or not error proceedings were had in these cases?

Mr. WICKERSHAM. I think so.

Mr. HOWLAND. And the judgment of the lower court was affirmed, was it not?

Mr. WICKERSHAM. That is my recollection.

Mr. HOWLAND. And the ability to appeal or to go up on error having been exhausted, they finally came with an application for a pardon?

Mr. WICKERSHAM. Right.

Mr. HOWLAND. Six years after the conviction?

Mr. WICKERSHAM. Whatever the time was.

Mr. HOWLAND. Yes; in 1911, the date of your report.

Mr. WICKERSHAM. Whatever the time was. It was some time afterwards.

Mr. HOWLAND. Mr. Finch was a London attorney under you?

Mr. WICKERSHAM. He was.

Mr. HOWLAND. And he made this investigation?

Mr. WICKERSHAM. He did.

Mr. HOWLAND. He wrote the letter and laid it on your desk, on the information he had?

Mr. WICKERSHAM. No; he brought it to me.

Mr. HOWLAND. He brought it to you and you looked it over?

Mr. WICKERSHAM. He brought it to me and I looked it over.

Mr. HOWLAND. And you signed it?

Mr. WICKERSHAM. No; I did not sign it until I had had much consultation with him and much done to the letter.

Mr. HOWLAND. At the time of the signing of that letter did you have before you the report of Mr. Heney?

Mr. WICKERSHAM. I do not recall that, Mr. Howland. I had whatever papers are referred to. If Mr. Heney's report in writing was before me then—I suppose it was—I had it. I had afterwards Mr. Heney individually.

Mr. HOWLAND. At the time of this report, did you have the report of a Mr. McCourt?

Mr. WICKERSHAM. United States attorney?

Mr. HOWLAND. Yes.

Mr. WICKERSHAM. Oh, undoubtedly I had; I do not recall now, but undoubtedly I had that report.

Mr. HOWLAND. In the Heney report, do you recall—or in the McCourt report—and I am reading now from the Heney report, page 32, where there is a quotation from the McCourt report——

Mr. WICKERSHAM. Mr. Howland, may I anticipate that. At this length of time I could not recall particular passages in individual documents. I had all the papers that were brought to me at that time, and at that time I examined them all with great care. At this length of time I could not recall whether I had this paragraph or that paragraph, or this passage or that passage.

Mr. FOSTER. Maybe he can recall the sentiment of it.

Mr. HOWLAND. I will give you the sentiment of it. Mr. McCourt in his report, appearing on pages 34 and 35—by the way, who was he; the district attorney following Mr. Heney, was he not?

Mr. WICKERSHAM. No; I do not think Mr. Heney was district attorney; he was a special assistant.

Mr. HOWLAND. I understand he was; who was Mr. McCourt?

Mr. WICKERSHAM. Mr. McCourt was United States attorney for the district of Oregon.

Mr. HOWLAND. Mr. McCourt, then, made a report to you, and do you recall having this statement before you:

I have given some attention to the names of the trial jurors in the respective cases (referring to those fraud cases).

I am reading this quotation from the Heney report.

Republicans predominate in number, and the men composing these trial juries are uniformly men of strict honesty, integrity, and high standing in their respective communities. They were all high-minded, practical men. Ordinarily a lawyer would not hesitate to accept them to try any case he might have.

I am disposed to think that the jury in each of these cases went into the trial thereof without any prejudice or bias against the defendant, and that the verdict in each case was a conscientious expression of their judgment after the fullest consideration. One of these jurors was a member of the recent grand

jury which convened in this district. He informed Mr. Macquire, my assistant, that he felt so bad at having to return a verdict against Jones that he was sick for three days thereafter. I have reason to believe that several others of the jurors in each of the cases against Jones felt much the same way.

I do not think there was any member of either of the juries that tried Jones that had a bias or prejudice that disqualified him to sit in the trial.

Do you recall whether that statement was before you when you made your report?

Mr. WICKERSHAM. No; I have no present recollection of it. If it was in Mr. McCourt's report, undoubtedly it was before me and undoubtedly I read it; but I have no present recollection of it.

Mr. HOWLAND. If that statement coming from the district attorney subsequent to Mr. Heney's special activities had been before you, what effect would it have had upon your ultimate decision in the matter?

Mr. WICKERSHAM. That would depend entirely on what the other evidence was.

Mr. HOWLAND. Exactly.

Mr. WICKERSHAM. That of itself, if there was nothing else before me but that, I would have reached a conclusion in conformity with his statements, probably.

Mr. HOWLAND. Further quoting from the McCourt report, I will ask if you recall this statement—

Mr. GRAHAM. You mean the Heney report?

Mr. HOWLAND. The Heney report, quoting from the McCourt report:

In the meantime a large number of employees and special agents of the Government scurried over the district from which the jury was drawn and, so far as possible, obtained as much of the history of the jurors contained in the box as possible, and personally interviewed or engaged the persons whose names were in the jury box in conversation relative to the land-fraud prosecutions. And the result of these inquiries, investigations, and interviews were daily reported to William J. Burns.

Is that the way you understand the facts to be in this case?

Mr. WICKERSHAM. Mr. Howland, I can not, at this length of time, undertake for a moment to accept or analyze particular paragraphs any more than a judge who has had a case tried before him and reached a decision can 10 years later tell you what particular piece of evidence weighed on his mind. All I can tell you is that I carefully examined all the evidence that was brought to my attention and reached the conclusion which was embodied in my report. I tried to give due weight to everything that was brought before me and reached a conclusion which was my honest judgment at that time.

Mr. HOWLAND. Why, certainly.

Mr. WICKERSHAM. But as to recalling a particular paragraph and whether that had a particular effect, it is impossible for me, of course, to say.

Mr. HOWLAND. The trial judge, Judge Gilbert, insisted that these men had had a fair and impartial trial to you did he not?

Mr. WICKERSHAM. Those letters which you read this morning indicate that and show undoubtedly he thought so.

Mr. HOWLAND. And Mr. Heney insisted there was nothing unfair or irregular in regard to <sup>it</sup> and that they had had a fair trial; did he not?

Mr. WICKERSHAM. Mr. Heney did not insist anything of the kind in his personal interview with me.

Mr. HOWLAND. Oh, in his personal interview.

Mr. WICKERSHAM. I told you I had a personal interview with Mr. Heney, and said to him I approved the report before it was sent to the President. He read it and made no comment on it at all.

Mr. HOWLAND. In so far as official documents is concerned——

Mr. WICKERSHAM. Ah! That is another thing.

Mr. HOWLAND (continuing). Mr. Heney protested against any charge of irregularity did he not?

Mr. WICKERSHAM. You have his report before you, whatever it was.

Mr. HOWLAND. You so understood him; did you not?

Mr. WICKERSHAM. I do not recall now whether I did or not. Whatever is in his report, he said.

Mr. HOWLAND. Mr. Burns denied all these charges in the report; did he not?

Mr. WICKERSHAM. Mr. Burns never came to see me until several years later, when I was informed that he was at my department one day in my absence and said he would return; and I withheld the report for several days, hoping to have an opportunity to see and read it to him, but he did not come.

Mr. HOWLAND. You, in your report, referred to a certain telegram received from Mr. Burns. Is that all of the telegram which you quote in your report [handing paper to witness]?

Mr. WICKERSHAM. I do not recall. I have not read my report for a long time and I do not recall a telegram or what telegram is quoted.

Mr. GRAHAM. May I interrupt for a moment while you are looking for your papers, Mr. Howland; I do not want to interfere with your examination?

Mr. WICKERSHAM. Can you tell us, or tell me, when the application for the pardon of Jones was made? Was it made at the time this investigation took place?

Mr. WICKERSHAM. I can not tell you when it was made. Of course, those applications are sometimes made formally, sometimes they are initiated by the pardon attorney. In this case I do not recall.

Mr. GRAHAM. It appears from the record here that this investigation of the jury came some six or so years after the trial and after this case had been removed by writ of error on appeal, to a higher court, and disposed of. Is that the fact? You knew nothing or heard nothing of it until 1911 or 1912, the date of these proceedings, did you?

Mr. WICKERSHAM. I can not recall hearing anything of it until, my recollection is, after the affirmance of conviction on the appeal. I think my attention was first called to it after the pardon attorney had it under consideration for some time.

Mr. GRAHAM. The record shows here it was in 1911 and 1912.

Mr. WICKERSHAM. Whatever it was.

Mr. GRAHAM. Now, the trial took place in 1905.

Mr. WICKERSHAM. Then there was that period, whatever it was.

Mr. GRAHAM. And this man had served his sentence?

Mr. WICKERSHAM. No; I do not think so—had he?



Mr. HOWLAND. No; he never served any sentence; they never got him in jail at all.

Mr. WICKERSHAM. I think not, Mr. Howland.

Mr. GRAHAM. The first sentence was commuted to four months?

Mr. WICKERSHAM. Yes.

Mr. GRAHAM. And then sentence was suspended?

Mr. WICKERSHAM. Yes.

Mr. GRAHAM. So that he never spent a day in jail?

Mr. WICKERSHAM. That is my recollection.

Mr. GRAHAM. So that during all that period from 1905 to 1912, there was never a murmur until the question of his pardon came up—is not that it—about jury proceedings?

Mr. WICKERSHAM. No murmur reached my ears.

Mr. GRAHAM. None reached your ears, or, so far as you know, reached the Department of Justice?

Mr. WICKERSHAM. I do not know.

Mr. GRAHAM. In 1912, was Mr. Willard Jones a man of any means in Oregon?

Mr. WICKERSHAM. I think he was a man in good standing.

Mr. GRAHAM. Was he prominent politically?

Mr. WICKERSHAM. That I do not know; I do not know. I am not familiar with Oregon politics.

Mr. GRAHAM. The time of his pardon was at the period of a presidential election?

Mr. WICKERSHAM. Or some time before. When was that?

Mr. HOWLAND. In June, 1912.

Mr. GRAHAM. In June, 1912.

Mr. WICKERSHAM. And the presidential election was——

Mr. GRAHAM. In November of that year.

Mr. WICKERSHAM. Let me say right there, that what was done in this case had no more relation to the presidential election than it had to the election of the King of England.

Mr. GRAHAM. You and I have known each other so long that it is not necessary to suggest my questioning does not imply anything of a political bias; but I wish publicly to say I had no such meaning, and I am inquiring publicly now to learn what was behind this proceeding that for five or six years slept, unnoticed and unmentioned, and was only called up at the time of this special endeavor, with your approval or knowledge. This man had been convicted; his conviction had been confirmed in the higher court; his sentence had been commuted; his sentence finally suspended, and five or six years afterwards a pardon procured for him in the midst of a presidential election.

Mr. WICKERSHAM. All I can tell you about that is that the pardon attorney came to me on one occasion and said he had been examining this case; that he was satisfied there had been a gross miscarriage of justice and he was digging down into it; that there had been a pollution of justice, both in the grand jury and the petit jury. I told him I could not credit such a thing, saying very much what I have said to you. The later results are shown there.

Mr. FOSTER. As a matter of fact, this pardon did occur, did it not, during the week Mr. Taft was renominated in Chicago?

Mr. WICKERSHAM. If that is true, it is a fact.

Mr. FOSTER. It was the same week, I believe, and following the same week the Roosevelt delegates, so called, had been unseated and the Taft delegates seated. Do you know whether, as a matter of fact, at that time Heney was very prominent in the Roosevelt movement? That was generally known?

Mr. WICKERSHAM. Of course.

Mr. FOSTER. Of course, it may have been a coincident; but the pardon was granted perhaps the second day following the unseating of the Roosevelt delegates.

Mr. WICKERSHAM. But it was in mind; Mr. Heney had personally had this under consideration for some time and had personally gone through every scrap of paper just as I did, and I distinctly resent the suggestion there was any connection whatever between his acting on the question of the pardon and the Roosevelt delegates' unseating. Let me say, moreover, that Mr. Heney, who conducted that prosecution and who was spoken of in this report, was a personal friend of mine, for whom I had a very high regard.

Mr. FOSTER. This what I was going to get at: When did you have your personal interview with Heney relative to granting the pardon?

Mr. WICKERSHAM. Some time before; I could not tell you exactly.

Mr. FOSTER. Was it days, weeks, or months?

Mr. WICKERSHAM. My recollection would be it was a matter of weeks; perhaps three or four weeks.

Mr. FOSTER. So that you may understand my position, my statement was prompted by the statement of the pardon attorney yesterday that the only people he can recall as having come to Washington to see him in connection with it was Jones and his attorneys out there.

Mr. WICKERSHAM. My recollection, my distinct impression is that the working out of the conclusion reached was due to the pardon attorney himself having been convinced by his investigation that things had been done there that ought not to support any conviction.

Mr. FOSTER. That is what I was trying to get. And I noticed yesterday when the pardon attorney was here that the file was more than a foot thick.

Mr. WICKERSHAM. Yes.

Mr. FOSTER. You do not in each of those pardon cases go through every paper yourself?

Mr. WICKERSHAM. No; but this was such an extraordinary case I believe I went through every paper in it myself. I gave a great deal of time to it. It challenged my attention. I could not believe the possibility of what was charged, and it was only after I had read every scrap of paper and had frequent conferences with the pardon attorney and had exhausted every source of information I could that I was reluctantly compelled to the conclusion I adopted in my report.

Mr. FOSTER. My questions were prompted by a desire to connect up the statement of the pardon attorney as to the people from Oregon coming and who did come. Can you recall any connection with those incidents at that time?

Mr. WICKERSHAM. That I do not know; because, as Attorney General, I would give, as the Attorney General does, a personal hearing to a petitioner for pardon and his attorney and, perhaps, some of his friends. I do not recall in this case of having given a personal hearing to either Mr. Jones or his attorney. I may have, but I do not recall it.

Mr. FOSTER. I am not trying to reflect on the Attorney General or the President, but I am trying to connect up the dates with reference to visits from Oregon parties.

Mr. WICKERSHAM. It was just that thought I wanted to challenge.

Mr. GRAHAM. I hope you won't think my questions had any purpose of reflection upon you.

Mr. WICKERSHAM. Mr. Graham, you and I have been friendly for so long that I feel quite sure of it.

Mr. JEFFERIS. What period of time were you Attorney General?

Mr. WICKERSHAM. From March 5, 1909, to March 5, 1913, during the entire Taft administration.

Mr. THOMAS. I want to ask a few questions. Some of the gentlemen seem to have injected a little politics into this matter this morning, and I want to ask who did the Oregon delegation support in convention, Taft or Roosevelt?

Mr. WICKERSHAM. You know you are asking me about a field in which I am very ignorant. I know nothing of politics.

Mr. HOWLAND. Mr. Wickersham, I hand you the original, I think it is, of your report in this matter, and I turn to a statement in a telegram. Please examine that [handing papers to Mr. Wickersham].

Mr. WICKERSHAM. Yes.

Mr. HOWLAND. That telegram that is referred to there in your report—will you kindly turn to it?

Mr. HICKEY. May I ask what report?

Mr. HOWLAND. Mr. Wickersham's report to the President.

Mr. WICKERSHAM. This is a communication addressed by me to the President under date of May 10, 1912, in the matter of the application for pardon of Willard N. Jones. It bears my signature. On page 9 there is this quotation:

Jury commissioners cleaned out old box from which trial jurors were selected and put in 600 names, every one of which was investigated before they were placed in the box. This is confidential.

This is said to be a telegram in cipher of W. Scott Smith, then secretary to the Hon. E. A. Hitchcock, then Secretary of the Interior, on August 17, 1905.

Mr. MONTAGUE. A telegram from whom?

Mr. WICKERSHAM. To the Secretary of the Interior—

Mr. MONTAGUE. Sent by whom, you say?

Mr. WICKERSHAM. Mr. Scott Smith. It says:

If there were any doubt concerning Burns's connection with the affair and what he actually accomplished, it would seem to be set at rest by his own telegram in cipher.

Mr. HOWLAND. I will ask you if that is the telegram in cipher that you refer to?

Mr. WICKERSHAM. I can not say now, Mr. Howland. This is a copy of a telegram. Whether that is the same or not I can not say now.

Mr. GRAHAM. Has it got the quotation in it that is referred to?

Mr. HOWLAND. You understand the cipher. That is in cipher, I understand?

Mr. WICKERSHAM. I say it is a telegram. Whether it is the same telegram that was taken from or not I can not tell; I can not tell you now at this date. Whether this is a document or the paper which was translated into the quotation in the report that is impossible for me to say.

Mr. HOWLAND. Can you translate the code? Have you not the key?

Mr. WICKERSHAM. I have not.

Mr. HOWLAND. Who makes those translations? Where did you get the translation to put in your report?

Mr. WICKERSHAM. I can not tell you that; I suppose in the department. I do not know what cipher is used, or anything about it, except that seems to be a telegram and in the report is an excerpt from the telegram.

Mr. MICHENER. You can read the telegram, can you not?

Mr. WICKERSHAM. I have not attempted to. This is the way it runs, to give you an idea:

Old jurors in every investigated in grand and men have court September for or attend—

And so on; evidently a code message.

Mr. FOSTER. If it was in the record and then the code was resorted to, we could translate it very readily.

Mr. HOWLAND. Have you ever seen that before [handing paper to Mr. Wickersham]?

Mr. WICKERSHAM. I do not recall, Mr. Howland; I may have seen it, but I really do not recall having seen it.

Mr. HOWLAND. I would like your best judgment on it.

Mr. WICKERSHAM. I have no best judgment on it; I do not know whether I ever saw it or not. I can not recall now whether I saw a particular telegram 10 years ago; it is impossible for me to say now.

Mr. GRAHAM. Is that from the record that has been produced?

Mr. HOWLAND. Yes; this is from the files.

Mr. GRAHAM. He says he examined every paper in the record.

Mr. HOWLAND. I know he did.

Mr. GRAHAM. He said so a little while ago that he did in this case, it being an extraordinary one

Mr. HOWLAND. Yes.

Mr. FOSTER. He answered me that he examined everything in it, and I called attention to the fact it was a foot thick.

Mr. WICKERSHAM. I do not say I did not see it, but I have no recollection of having seen it.

Mr. HOWLAND. Will you refresh your memory and see if you can remember having seen it?

Mr. WICKERSHAM. I can not tell you that.

Mr. HOWLAND. See how they jibe up. Read a little of the translation back there.

Mr. WICKERSHAM. That would be merely argumentative. I have no present recollection of it. That may or may not have been the telegram I saw, I can not tell you; it is impossible.

Mr. GRAHAM. I am only suggesting that counsel might save time. If that is in the record, that record is before the committee and he has the right to refer to it and produce it.

Mr. HOWLAND. Well, this is produced from the files of the department in this case, as I understand it, and they are all in evidence?

Mr. GRAHAM. Yes.

Mr. HOWLAND. The translation is here, but I can not say that the code was properly translated.

Mr. GRAHAM. No; but the code and translation are there as one document?

Mr. HOWLAND. They are right here as one copy.

Mr. FOSTER. And he could not say whether he read the translation or what was in his mind.

Mr. HOWLAND. I am reading now from what purports to be a photographic copy of the telegram addressed to W. Scott Smith, from New Hampshire somewhere. The code, which is on the back of it——

Mr. RALSTON (interposing). Portsmouth, N. H.

Mr. MONTAGUE. Is that the Burns telegram?

Mr. HOWLAND. Yes; it is the Burns telegram which the Attorney General examined.

Mr. GRAHAM. Won't you please read it?

Mr. HOWLAND (reading):

Jury commissioners cleaned out old box from which trial jurors were selected and put in 600 names, every one of which was investigated before they were placed in the box. This is confidential.

Mr. WICKERSHAM. That far is substantially the same as the quotation from the letter.

Mr. HOWLAND. Exactly. The telegram continues that [reading]:

Grand jury was drawn to-day and is composed of splendid men and in whom we have the very greatest faith. The court will not meet until September 5. We will look for you about the 24th or 25th. Do not forget to attend to Columbus pension office matter.

What is your best judgment now, Mr. Wickersham? Are you able to tell us whether that was the telegram or not?

Mr. WICKERSHAM. No. My inference would be that it is, because the first part of it is identical with that quotation, but I have no present recollection about it.

Mr. RALSTON. I wonder if Mr. Howland's purpose is to prove that Mr. Burns acted the same way toward the grand jury that he did toward the petit jury? I can not see otherwise why the additional telegrams are introduced.

Mr. GOODYKOONTZ. Mr. Wickersham, did you support some person other than Mr. Burns for the place?

Mr. WICKERSHAM. I did not; no.

Mr. GOODYKOONTZ. Did you not indorse another candidate—write a very strong letter for him?

Mr. WICKERSHAM. I think perhaps I did indorse Mr. Bielaski. I am not sure; but I may have. I will tell you it is difficult for me to say, because whenever anyone who served the department faithfully under me comes and asks me to write him a letter, I take pleasure always in writing a letter and stating what my impression was of him when he worked under me. But I had no candidate for that



place, if that is what you mean. And the utmost I did in regard to Mr. Burns, which I thought was my duty to do, was to call Mr. Daugherty's attention to the Jones case, and ask him to examine the file before he made the appointment. Having done that, I made no further objection.

The CHAIRMAN. Is there anything further so far as Mr. Wickersham is concerned?

Mr. HOWLAND. Mr. Wickersham, you take the position that this matter is ancient history; that you can not recall from memory anything in regard to details; and that you stand on your report.

Mr. WICKERSHAM. Absolutely.

The CHAIRMAN. Is there anything further you desire of this witness?

Mr. RALSTON. I think not.

(Thereupon, at 12.25 o'clock p. m., the committee took a recess until 1.30 o'clock this afternoon.)

#### AFTER RECESS.

The committee reconvened at the expiration of the recess.

#### IN RE WILLARD N. JONES CASE.

Mr. JEFFERIS. Mr. Chairman, I want to ask a question that is suggested to my mind of the Chair about this alleged telegram to the effect that the jury commissioners cleaned the old box from which trial jurors were drawn and put in 600 names. Could the Chair advise as to the number of names usually put into the jury box under the law?

The CHAIRMAN. The law provides that not less than 300 shall be selected, but I think the custom is in certain districts, at least, to make the number larger.

Mr. CHANDLER. In this case is it not a fact that 2,600 names were used?

The CHAIRMAN. No; a panel of that number was not ordered?

Mr. RALSTON. Twenty-six hundred names were summoned and 2,000 set aside, leaving 600 who had been summoned to go into the box.

The CHAIRMAN. There is not anything to indicate just what happened. They drew 600. But as far as I remember the testimony, there was nothing to show why the other 2,000 were rejected.

Mr. RALSTON. No; but there is, I think, sufficient to indicate that Mr. Burns was responsible in connection with this.

Mr. HERSEY. That is a supposition, is it not?

The CHAIRMAN. Is not that a supposition? Have you any testimony as to that?

Mr. RALSTON. It is the supposition of the Attorney General after examining all the data.

The CHAIRMAN. I did not find any statement from him to that effect, if I understood him correctly.

Mr. RALSTON. I was discussing it rather prematurely and rather incidentally, but I think that is clearly shown.

## RE SPECIFICATION NO. 4.

Mr. CHAIRMAN. Mr. McChord is present and has been present all of the morning. He was summoned with regard to specification 4. We are not ready to proceed to that specification; but if the committee is willing that Mr. Chairman McChord's testimony should be taken at this time so that he may be relieved to go about his ordinary public duties, I am sure it would be appreciated by him and I should be very glad myself that that be done, this, of course, without prejudice to our immediately resuming consideration of the question with which we are now concerned.

Mr. HERSEY. What section does he come under?

Mr. RALSTON. Section 4.

Mr. BIRD. Is that the safety appliance inspection law?

Mr. RALSTON. Yes.

The CHAIRMAN. That is a matter that will be immediately taken up following this, according to your program?

Mr. RALSTON. Yes, sir; according to my program.

Mr. JEFFERIS. How long will it take you to introduce your evidence on this particular item, No. 13?

Mr. RALSTON. That is a very unsafe thing to prophesy.

Mr. FOSTER. How many witnesses have you?

Mr. RALSTON. I have one and possibly four. It may take a very short time or it may take quite an extended time.

The CHAIRMAN. Are they here so that we can call an evening session and hear them?

Mr. RALSTON. Oh, yes; I assume so. I do not know that any of us love evening sessions, particularly.

The CHAIRMAN. No; but we have considerable to do and we do not want to spend all the next eight or ten weeks listening to this.

Mr. RALSTON. Well, I have made the suggestion about calling Mr. McChord, subject to my right to proceed.

Mr. FOSTER. Mr. Chairman, in order to expedite matters I move that we proceed to section 13, with the understanding that we have a night session to go ahead with section 13 and No. 4, and have it together.

The CHAIRMAN. The commissioner is here and perhaps he had better be heard now. If we see fit to printing the testimony we can group it altogether just the same.

Mr. BIRD. Mr. Chairman, on charge No. 4, it appears to me, after studying it very carefully, that there are some very serious legal questions as to that being a foundation for a charge for impeachment. I should not wish for the testimony to go in, and then be in the hearing regardless of the determination.

The CHAIRMAN. As I take it, the question of whether these charges are impeachable is a matter for the committee to consider after they have heard all the testimony.

Mr. FOSTER. Is the idea that as to all of them we will take testimony?

The CHAIRMAN. I think so.

Mr. BIRD. With that understanding, I will be very glad to have Mr. McChord testify at this time.

The CHAIRMAN. Very well.

**TESTIMONY OF HON. CHARLES C. McCHORD, CHAIRMAN INTER-STATE COMMERCE COMMISSION, WASHINGTON, D. C.**

(The witness was duly sworn by the chairman.)

Mr. RALSTON. Judge McChord, you are chairman of the Interstate Commerce Commission?

Commissioner McCHORD. Yes, sir.

Mr. RALSTON. And have been for how long a time?

Commissioner McCHORD. A year and a half.

Mr. RALSTON. As chairman and member of the Interstate Commerce Commission, is your attention of necessity called to the enforcement or nonenforcement or nonobservations of what are called the inspection laws, particularly with relation to locomotive boilers and the regulations which are made under and by virtue of those laws?

Commissioner McCHORD. That is true. The act of 1911 confined the jurisdiction of the chief of the boiler division and of his inspectors to boilers. In 1917, I think it was, that act was amended and made applicable to the entire engine.

The locomotive division, unlike that of the safety division, is not entirely within the jurisdiction of the Interstate Commerce Commission; that is to say, under the act the President appoints the chief of that division and two assistants, and the act vests that chief and these assistants with certain powers and duties with respect to the investigation of engines, and the only thing the Interstate Commerce Commission has to do about it is to appoint 50 inspectors chosen from the civil-service rolls, when they send those to us.

It is further made our duty to provide office space for the chief and his assistants. The 50 inspectors are appointed by the chief of the division, and it is our duty to furnish them with office and clerical assistance.

The chief of the division, the law provides, shall make reports to us, and we transmit those reports to Congress. So the ultimate power is lodged in the chief and his division. They have some very drastic powers. If they find an engine that is unsafe or unfit, they have the power to order that engine out of service.

There is another provision that has never been enforced, because of the drastic and ample powers invested in the chief and his division and to order engines out, and that is under section 9, which imposes a penalty of \$100 for each violation. Since the enactment of the law of 1911 that section has never been resorted to, except in one instance, I think it was, the Girardeaux & Northern Railroad, a little railroad down in the South, where the receiver of a road refused to obey the orders of the chief and the division, and we undertook, or rather the chief of the division did, to enforce the penalty clause, and that is the only time it has ever been enforced.

I might say that it has been our endeavor at all times to assist the chief and his inspectors in the discharge of their duty in any way we can.

So it has been brought to our attention——

The CHAIRMAN (interposing). Against whom was that penalty imposed—against the railroads or against the inspectors?

Commissioner McCHORD. The penalty goes against the railroad.

Mr. BIRD: Is that for the use of an engine that has been condemned?

Commissioner McCHORD. It is for the violation of any order or rule or regulation that has been adopted by the locomotive division.

Mr. RALSTON. Judge, since about, let us say, the 1st of July, has there been any marked increase in the laxity with which the regulations imposed by the commission upon common carriers have been observed?

Commissioner McCHORD. None that I know of—no laxity.

Mr. RALSTON. I do not mean "laxity" on the part of the Interstate Commerce Commission.

Commissioner McCHORD. Of the carriers?

Mr. RALSTON. Of the carriers themselves.

Commissioner McCHORD. Yes; we have observed that. Prior to the 1st of July, the coal strike was on.

Mr. GRAHAM. What year—this year, of course?

Commissioner McCHORD. Yes; last July, and the shopcrafts went on strike on the 1st day of July. Traffic fell off because of the failure to produce coal, and not until the latter part of July did we observe anything approaching the critical with respect to the failure to repair engines. Along about the 1st of August it occurred to us that it was approaching the danger point.

Mr. RALSTON. What do you mean by the "danger point"?

Commissioner McCHORD. Getting worse.

Mr. MICHENER. What brought that to your attention—who brought the matter to your attention?

Commissioner McCHORD. Why, the chief of the bureau—locomotive division. He is in our building and constantly in touch and in cooperation with us; he reports to us.

Mr. RALSTON. Can you in any scale of percentage state how much worse the conditions grew after the 1st of July compared with what they were before?

Commissioner McCHORD. You mean with all engines?

Mr. RALSTON. Yes.

Commissioner McCHORD. We have not that. We get those statistics from the bureau of railway economics. But so far as engines that are inspected by the locomotive bureau are concerned, I can give you that.

Mr. RALSTON. I wish you would, please.

Commissioner McCHORD. I have that from and including February, 1922, to and including November, 1922. Do you want the entire period or just since the 1st of July?

Mr. RALSTON. Is it arranged by months?

Commissioner McCHORD. Yes.

Mr. RALSTON. I think we might commence, as a matter of economy of time, with the 1st of July.

Commissioner McCHORD. July, the number of locomotives inspected were 4,085; locomotives found defective, 2,456; percentage of defective, 60 per cent; ordered out of service, 169.

August, 6,107 inspected; found defective, 4,355; percentage found defective, 71 per cent; ordered from service, 469.

September, inspected 6,160; found defective, 4,432; per cent found defective, 72; ordered from service, 759.

October, inspected, 5,628; found defective, 3,997; per cent found defective, 71; ordered from service, 789.

November, inspected, 5,360; found defective, 3,736; per cent found defective, 70; ordered from service, 704.

Mr. FOSTER. There has been a progressive increase since the 1st of July, has there not?

Commissioner McCHORD. Except as to November.

Mr. FOSTER. They went up until September and then came down in their percentage.

Commissioner McCHORD. It was 72 per cent in September and 70 per cent in November.

Mr. FOSTER. And 71 per cent in October?

Commissioner McCHORD. 71 per cent in October and 60 in July.

Mr. FOSTER. It reached the maximum in September, then?

Mr. RALSTON. No; not in September. In September it was 70.

Commissioner McCHORD. It was 60 in July, 71 in August, 72 in September, 71 in October, and 70 per cent in November.

Mr. RALSTON. So that they are to-day at nearly their worst figures, so far as safety is concerned; is not that true?

Commissioner McCHORD. You mean from when?

Mr. RALSTON. As compared with any period antecedent to this time?

Commissioner McCHORD. Compared with February to June, it is worse.

Mr. RALSTON. It is worse within the most recent months, if I understand you?

Commissioner McCHORD. Yes.

Mr. JEFFERIS. Does that go to the question of safety, or just defectiveness?

Commissioner McCHORD. Anything that is defective about a locomotive, to some extent goes to safety. All of them were not recorded as absolutely unsafe; consequently there were only a certain number ordered out of service.

Mr. JEFFERIS. During what month was the greatest number ordered out of service?

Commissioner McCHORD. October it was 789.

Mr. RALSTON. And how many in November, may I ask?

Commissioner McCHORD. In November it was 704.

Mr. RALSTON. No very material difference between the two.

Mr. GRAHAM. It is the difference between 789 and 704.

Mr. JEFFERIS. Will these accounts go into the record?

Mr. RALSTON. They can, but I will agree they are not valuable.

The CHAIRMAN. It is true where attorneys testify that we are not bound to print it in the record, their testimony not being sworn.

Mr. RALSTON. It may be regarded as argument.

The CHAIRMAN. Of course, when the attorney undertakes to state a fact, I suppose it should be stricken out.

Mr. RALSTON. I suppose the facts will overrule any attorney's statement—overrule or sustain it.

The CHAIRMAN. Of course, if we get too much of that, I think we would probably strike out such statements.



Mr. RALSTON. Judge, on receiving these reports from the bureau of inspection, did you take any action in an official way to bring about corrections?

Commissioner McCHORD. Why, in what way do you mean?

Mr. RALSTON. To be more direct, did you go to the President about it?

Commissioner McCHORD. I wrote to the President on the 15th of August, and I will state that I gave Mr. Ralston a copy of my letter to the President and his reply to me, because it had already been made public by his consent and was published in the papers. Ordinarily we do not make those things public.

Mr. RALSTON. May I ask if this is the copy——

Mr. MICHENER (interposing). When did you give Mr. Ralston that copy?

Commissioner McCHORD. A day or two ago.

The CHAIRMAN. This, you say, is a letter addressed to the President?

Mr. RALSTON. It is the copy of a letter addressed to the President.

Commissioner McCHORD. A copy of my letter to the President and his reply.

The CHAIRMAN. How do you expect to connect that with the Attorney General?

Mr. RALSTON. I can not do it all at once, but I am leading up to it. We expect to show that the attention of the Attorney General was called to this condition as early as the 15th of August; and, frankly, I expect to show, further, that from a practical standpoint, notwithstanding deaths all over the country and destruction from the explosion of locomotives no steps were taken.

The CHAIRMAN. I asked you the question, whether you are going to connect that with the Attorney General?

Mr. RALSTON. I said we expected to connect it up with him.

The CHAIRMAN. There is no occasion for your speech on that subject.

Mr. RALSTON. The speech was forced from me; I did not want to make it.

Mr. FOSTER. Do you expect to bring it to the attention of the Attorney General?

Mr. RALSTON. I expect to bring it to the Attorney General before my case is through.

Mr. JEFFERIS. From what I understood from Mr. McChord, all of these reports so far are made to the Interstate Commerce Commission. Is it a duty of law that you are to make report to Congress or somebody else? I am not clear on it.

Mr. RALSTON. I think Judge McChord can answer your question.

Commissioner McCHORD. The duty in the matter—the inspector reports to the Interstate Commerce Commission and we report to Congress. Section 9 of the boiler inspection act provides [reading]:

SEC. 9. That any common carrier violating this act, or any rule or regulation made under its provisions, or any lawful order of any inspector, shall be liable to a penalty of \$100 for each and every such violation, to be recovered in a suit or suits to be brought by the United States attorney in the district court of the United States having jurisdiction in the locality where such violations shall have been; and it shall be the duty of such attorneys, subject to the direction of the Attorney General, to bring such suits upon duly verified information

being lodged with them, respectively, of such violations having occurred; and it shall be the duty of the chief inspector of locomotive boilers to give information to the proper United States attorney of all violations of this act to his knowledge.

The CHAIRMAN. Does that mean that in the first place the Attorney General is compelled to act, or is it the district attorney that must act?

Mr. JEFFERIS. The district attorney.

Commissioner McCHORD. It is made the duty of the chief of the bureau.

Mr. GRAHAM. To initiate proceedings?

Commissioner McCHORD. To gather this information and give it to the district attorney?

Mr. GRAHAM. Yes.

Commissioner McCHORD. Now, this thing is quite technical. The ordinary lawyer, of course, would not know how to prosecute these cases, or the ordinary man that is not an expert, who has not had the experience in the handling of locomotives or machinery, would not know whether a locomotive is defective or not. Consequently, take, for instance, our bureau of safety. There are certain penalties provided for the violation of the hours of service and for the utilization of cars that are defective and failure to comply with the safety appliance law.

We have 50 inspectors there; the locomotive bureau also has 50. The plan that is followed is this: The chief of that bureau and his inspectors gather this information, and we have three attorneys who devote their entire time to the prosecution of those cases.

Mr. JEFFERIS. That is the Interstate Commerce Commission?

Commissioner McCHORD. That is the Interstate Commerce Commission. The bureau of safety is directly under our supervision. We appoint the chief and his assistants and his inspectors, and the law makes it our duty to do this prosecuting; consequently we are equipped for that purpose.

Now, then, when we get them—the district attorney, or no prosecuting attorney who has not had experience can draw these complaints. So they are drawn by our three attorneys who give their constant time and attention and who are educated up to it, and it is a finished product when it is sent to the district attorney in the district where the offense occurred. Then these attorneys go out with the district attorney and help prosecute the case. But in the case of the locomotive division there is no such machinery, and there is no such provision of the law; there is no appropriation for that purpose, and we have never felt the necessity for that, because we have never found it necessary to enforce section 9 to the penalties, because of the drastic and plenary power that the chief of the division and his inspectors have to order engines out of service is a pretty good weapon, and it has also accomplished its purpose. But when we found, for instance, that they had been violating some of the orders we said to the chief inspector that the time had come to do some prosecuting here and get up the information.

He undertook to do that, and his inspectors, who had never had any experience in gathering this evidence, that it would be necessary to sustain a prosecution of this sort in court—when they brought this

information we found that it was not sufficient, and in order to assist him we, by a minute, entered by the commission on the 9th of October direct to our bureau of inquiry—that is the division where we do the prosecuting—to assist the chief in the preparation of these cases, and to go through the evidence they had and find out whether they had sufficient to uphold a case in event they sent it to the district attorneys for prosecution. They found that he did not have. They were inexperienced and did the best they could.

Mr. JEFFERIS. When was that—the 9th of October?

Commissioner McCHORD. The 9th of October. So they then undertook to send the inspectors back and to gather it. Of course you understand these men have their hands full in order to perform their regular routine duties.

Mr. MICHENER. Which men, Judge; the inspectors?

Commissioner McCHORD. The 50 inspectors of the locomotive division; yes, sir. And in order to gather this evidence and get what is necessary, we delegated our bureau of inquiry, and then we found that that was not sufficient, and then we got our bureau of accounts—we have men who are stationed out in the country at different places—and we directed them to lay aside everything and go and gather this evidence in order that these cases might be closed up.

One of the defects that we found in the evidence was that these inspectors had not ascertained whether or not the locomotive was engaged in interstate commerce and a number of other things. So we are undertaking to gather that evidence now.

The chief of the division, whose duty it is, has sent a number of these cases, with the bills prepared, to the district attorneys out in the different States, and we are continuing to do that.

Mr. BIRD. Is this work, Judge, being done expeditiously?

Commissioner McCHORD. This work is being done as expeditiously as it can be done. The bureau, as I say, was not equipped at all to do it; and, feeling responsibility in the matter, we undertook to assist him in every way we could possibly, and turned over to him the bureau of inquiry and bureau of accounts.

Mr. BIRD. That applies to the action for penalties?

Commissioner McCHORD. Yes. The inspectors and the chief have the power to order engines out.

Mr. JEFFERIS. These cases you are preparing you send to the respective district attorneys over the United States?

Commissioner McCHORD. Yes.

Mr. MICHENER. Do you send them to the Attorney General?

Commissioner McCHORD. We send a copy of what we send to the district attorney to the Attorney General.

Mr. MICHENER. Has the Attorney General in any way refused to act on these reports which you have sent to him?

Commissioner McCHORD. Absolutely not. The Attorney General has issued instructions to all his attorneys to prosecute these cases.

Mr. FOSTER. When did you begin sending those out, Judge, to the different districts?

Commissioner McCHORD. Just as soon as we got them made up.

Mr. FOSTER. Do you remember about when that started?

Commissioner McCHORD. When was that, Mr. Curry? Mr. Curry says the latter part of November.

Mr. FOSTER. A couple of weeks ago?

Commissioner McCHORD. Yes. Now, the inspectors had brought this evidence in and we found it was defective, and then we undertook to straighten it out and we sent wires out in order to expedite the matter of getting this information.

Mr. FOSTER. Your department was functioning the best it could, but was unable to start them out to the districts until about two weeks ago?

Commissioner McCHORD. Yes, sir.

Mr. RALSTON. Your testimony which has just been given, Mr. McChord, applied, does it not, merely to the matter of collection of penalties and not to the enforcement of the regulations?

Commissioner McCHORD. Why, the inspectors were enforcing the regulations by ordering the engines out. We found some cases where the carriers had refused to obey the order of the inspector, and we sent prosecutions out; that is, the chief has sent prosecutions out on those cases.

Mr. RALSTON. I call your attention to the fact that in your report to Congress you speak of—I think I can find it.

Mr. BIRD. Judge, may I ask, if you please—you say that in some instances they refused to take out these engines that had been ordered out?

Mr. McCHORD. Yes.

Mr. BIRD. And those are the ones that are being followed up for penalization?

Mr. McCHORD. Yes.

Mr. BIRD. Was the question involved in that matter as to whether the inspectors properly or improperly ordered them out?

Mr. McCHORD. No; no such question has arisen. The carrier has the right of appeal from the order of an inspector ordering an engine out, to the chief, and then there is a further appeal from his conclusion to the Interstate Commerce Commission, and there are no such appeals—no such claim made.

Mr. BIRD. The point I wish to make clear, Judge, is this: Your testimony thus far upon this particular point has related to the enforcement of penalties, has it not, and not to the enforcement of the regulations?

Mr. McCHORD. Well, the penalties for failure to comply with the regulations.

Mr. BIRD. One is punishment and the other is enforcement, which are two entirely different things. Isn't that true?

Mr. McCHORD. I don't—how would you enforce it other than as pointed out by the statute?

Mr. RALSTON. That I want to show to the committee later on, by proceeding in equity.

Now, as a matter of fact, was it not true that during this period—and I go back to July and August—the carriers stopped in many instances making the regular inspections which they are required to make by the rules and regulations of the Interstate Commerce Commission?

Mr. McCHORD. They did.

Mr. JEFFERIS. I can't see where this is material.

Mr. RALSTON. I am going to connect it all up. If I fail, it is not material.

Mr. GRAHAM. You had better begin at the connection.

Mr. MICHENER. If you do not connect it up, it is understood with your consent it is to be stricken out?

Mr. RALSTON. Yes, sir.

Mr. MICHENER. You promise as an attorney that if you do not connect it up it may be stricken out without any comment on your part that we are taking an unfair advantage of you?

Mr. RALSTON. Yes, sir. I don't think I will have any occasion to make a speech if I don't connect it up in a satisfactory manner, I hope, to the committee.

Now, will you read my last question, please?

(The reporter read as follows:)

Mr. RALSTON. Your testimony which has just been given, Mr. McChord, applies, does it not, merely to the matter of collection of penalties and not to the enforcement of the regulations?

Mr. McCHORD. Why, the inspectors were enforcing the regulations by ordering the engines out. We found some cases where the carriers had refused to obey the order of the inspector, and we sent prosecutions out—that is, the chief sent prosecutions out on those cases.

Mr. RALSTON. Judge, you have stated the average of defective locomotives in certain months from July down to and including November?

Mr. McCHORD. No; the chief reports the actual number of defective engines he finds, and then gives the percentage of that to the number examined.

Mr. RALSTON. Is it not true that with regard to certain railways an immense majority of the locomotives are out of order?

Mr. McCHORD. I could not tell you. We do not keep those statistics. We get them from the bureau of economics of the American Railway Association. I haven't those figures with me, but perhaps we could supply them.

Mr. RALSTON. This, perhaps, you will remember: Is it not true that as to the Denver & Rio Grande and the Texas & Pacific between 80 and 90 per cent of their locomotives are defective to-day?

Mr. McCHORD. Well, the Denver & Rio Grande is always in bad shape and I would not—Mr. Curry, do you know that?

Mr. CURRY. No.

Mr. McCHORD. We haven't any figures on that.

Mr. GOODYKOONTZ. These reports you get from the American Bureau of Railway Economics are unofficial?

Mr. McCHORD. Yes.

Mr. GOODYKOONTZ. That is a private concern?

Mr. McCHORD. Yes; it comes from them and it is altogether accurate, because they very often report an engine in good condition because it is in service, when in fact it may be running in service and be defective.

Mr. BIRD. Will you please explain the differentiation between a defective engine and one ordered out of service?

Mr. McCHORD. Well, that is in the discretion of the inspector as to whether it is sufficiently defective to be unsafe, and under those circumstances they have discretion to order them out.

Mr. BIRD. Then do I take it that there is a presumption that if an engine is in service it is not defective to the extent of being unsafe?



Mr. McCHORD. Well, I do not know why the presumption would lie. Our inspectors are constantly on the job and if they find an engine that is defective, or if they find that the railroad has not reported an engine that is defective, they get after them about it.

Mr. GRAHAM. Judge, if there is any presumption would it not be this: That the presumption is that the inspectors are doing their duty and that when the engine approaches the danger line in defectiveness it is ordered out of service?

Mr. McCHORD. Yes.

Mr. GRAHAM. And when it is not, when it is running, the fact that it is running is evidence that the inspectors have not found it to be dangerous?

Mr. McCHORD. Yes. And you see that is true—you see we have 260,000 miles of railroad; we have 70,000 engines; we have 50 inspectors, and they are constantly on the job, and the utmost that they can do is to police.

Mr. RALSTON. Judge, you were called on to make a report as to—I think I had better go back for a moment in the order of date.

I showed to you a copy of your letter to the President. I will ask you to identify that for a moment. I handed you the carbon.

Mr. McCHORD. Yes; here it is. This is the letter that I addressed to the President, and, as I say, we have no hesitancy in making this public, because it was made public by consent and given to the press some time ago.

Mr. RALSTON. May I then read this in evidence? [Reading:]

AUGUST 15, 1922.

DEAR MR. PRESIDENT: In the administration and enforcement of the locomotive inspection and related safety appliance acts of Congress the commission has observed with concern the progressive deterioration of motor power upon certain of the important carriers of the country since July 1, 1922, and during the present strike.

The effect of deferred repairs is cumulative and becomes increasingly felt as time goes on. The acts which we are called upon to administer leave little discretion with the commission as to enforcement when violation comes to light. In the continuance of our enforcement of the law we are taking steps and will be compelled to continue to proceed in a manner which must bring about serious withdrawals of motor power from service. Certain violations of the acts we report to the Attorney General for appropriate legal action. With a continuance of existing conditions these will be increasingly frequent.

Knowing your interest in the matter we felt you should be advised of the facts.

Faithfully yours,

C. C. McCHORD, *Chairman.*

The PRESIDENT,  
*The White House.*

Mr. BOIES. Now, Mr. Ralston, so far as I am concerned, the chips can fall where they may, but I can not see where you are trying to impeach Mr. Daugherty on this; it must be the railroad companies or the Interstate Commerce Commission or the inspectors.

Mr. RALSTON. I am going to make that very clear, I think, to the committee when I shall put on the stand Mr. Stevenson. I expect to do it. I do not want to do a vain thing; I am not here for that purpose.

Mr. BOIES. If you would put on your testimony the other end too, it might be clearer to the committee.

Mr. RALSTON. I am only putting on Judge McChord, as the committee knows, to accommodate him and so that he may attend to his pressing duties. Otherwise, perhaps, I should have called Mr. Stevenson first, though I think I am perfectly proper in calling Judge McChord at this time.

Did you receive this reply from the President [handing a paper to the witness]?

Mr. McCHORD. Yes.

Mr. RALSTON (reading):

THE WHITE HOUSE,  
Washington, August 15, 1922.

MY DEAR CHAIRMAN McCHORD: I have yours of even date in which you call to my attention the progressive deterioration of motive power upon some of the important railroad lines of the country as the outgrowth of the prevailing strike. This growing menace to maintaining transportation has been called to my attention unofficially in various ways. Under all the circumstances I know of nothing to be done except to insist upon the full enforcement of the law.

It is a very natural thing, under circumstances which exist at the present moment, to waive the exactions in behalf of safety in seeking to maintain transportation. In my judgment it is better to have the service diminished rather than attempt the movement of trains on which safety is not assured, as far as compliance with the law may provide it.

I trust that your inspection forces will exert themselves to the utmost in order to be able to pass upon safe equipment, because the official sanction of the Government will remove all questions of dispute.

Very truly yours,

WARREN G. HARDING.

HON. CHARLES C. McCHORD,  
*Chairman Interstate Commerce Commission.*

Mr. FOSTER. Would it bother you, Mr. Ralston, if I would ask the judge a question at this point?

Mr. RALSTON. No, sir.

Mr. FOSTER. I notice, Judge, that the letter you sent to the President was dated August 15. On September 1 the Attorney General secured a restraining order in Chicago. Now, did the number of engines that were found defective increase or decrease after September 1? I am just trying to connect your report to the President and the action at Chicago and see whether it had any effect in the increase or decrease of defective engines.

Mr. McCHORD. In September there were 6,160 engines.

Mr. FOSTER. Your percentage will show it.

Mr. McCHORD. Seventy-two per cent in September.

Mr. FOSTER. Then what happened after that?

Mr. McCHORD. October, 71 per cent; November, 70 per cent.

Mr. RALSTON. Judge McChord, you were called on with reference to this condition by a resolution of the Senate, were you not?

Mr. McCHORD. Yes.

Mr. RALSTON. And made a report on behalf of the commission—or, rather, the then acting chairman made the report—Clyde B. Aitchison—under date of August 29, 1922. Is this the report [handing a paper to the witness]?

Mr. McCHORD. That is it; yes.

Mr. RALSTON. Mr. Chairman, this report is so comparatively lengthy that—may I ask that it be made a part of the proceedings to-day for reference?

Mr. BIRD. Why can't it be referred to just as Senate Document No. So-and-So?

The CHAIRMAN. No. 244.

Mr. RALSTON. Then you have got to hunt up the document. It seems to me all the evidence ought to be in one place.

The CHAIRMAN. We can put it in. That will be put into the record, then, unless it is found to be just what Mr. McChord has already testified to. Of course, if it is simply a repetition it would not be worth while.

Mr. RALSTON. It contains a great deal of detail that it would waste time to get out by examination.

Mr. HERSEY. It is the statement of the Interstate Commerce Commission, is it not?

The CHAIRMAN. Yes.

The report is as follows:

[Senate Document No. 244, Sixty-seventh Congress, second session.]

INTERSTATE COMMERCE COMMISSION,  
Washington, August 29, 1922.

To the PRESIDENT OF THE SENATE:

I have the honor to transmit herewith report of the Interstate Commerce Commission in re inspection of locomotive boilers, which is responsive to the direction conveyed by Senate Resolution No. 327 of August 7, 1922.

CLYDE B. AITCHISON,  
Acting Chairman.

INSPECTION OF LOCOMOTIVE BOILERS.

AUGUST 29, 1922.

By the COMMISSION:

The following report is submitted in response to Senate Resolution 327, reading:

*"Resolved*, That the Interstate Commerce Commission is hereby required and directed to report to the Senate whether or not the provisions of the act entitled 'An act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their locomotives with safe and suitable boilers and appurtenances thereto,' approved February 17, 1911, and the amendment to said act approved March 4, 1915, is being violated, and if so to report the extent of such violation and to report specifically whether inspection of locomotive boilers is presently being made in all Federal locomotive boiler inspection districts and upon the roads of all common carriers engaged in interstate commerce as required by said act."

The locomotive boiler inspection act approved February 17, 1911, has as its purpose the promotion of the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their locomotives with safe and suitable boilers and appurtenances thereto, making it unlawful to use any locomotive engine propelled by steam power in moving interstate or foreign traffic unless the boiler of such locomotive and appurtenances thereof are in proper condition and safe to operate without unnecessary peril to life or limb. The act provides that all boilers shall be inspected from time to time in accordance with the provisions thereof and be able to withstand such test or tests as may be prescribed in the rules and regulations provided therefor.

By act approved March 4, 1915, the original act has been made to apply to and include the entire locomotive and tender and all parts and appurtenances thereof. The provisions of the act as amended apply to any common carrier or carriers, their officers, agents, and employees engaged in interstate or foreign commerce.

As required by the act of the United States was divided by us into 50 locomotive-boiler inspection districts and one inspector assigned to each of such districts. It is required that each inspector shall make such personal inspection of locomotives under his care from time to time as may be necessary to fully carry out the provisions of the act and as may be consistent with his

other duties, but he shall not be required to make such inspections at stated times or at regular intervals.

It is further provided that whenever any district inspector shall, in the performance of his duty, find any locomotive not conforming to the requirements of the law or the rules and regulations, he shall notify the carrier in writing that the locomotive is not in serviceable condition and thereafter such locomotive shall not be used until in serviceable condition.

Specifically, as to the matters included within the Senate resolution:

Instances have been brought to our attention where, in our opinion, the act as amended, referred to in Resolution 327, recently has been violated.

It is impossible for us to accurately report the extent of such violations.

Inspection of locomotive boilers is at present being made in all Federal locomotive boiler-inspection districts by our inspectors, but all inspections by the carriers as contemplated in section 5 of the act are not being made by and upon all common carriers engaged in interstate commerce. The reports from our inspectors indicate a very general let down in the matter of inspection by the carriers which gives cause for concern. The carriers report various reasons for not making these inspections. Some of the reasons assigned are as follows:

"No monthly inspection made of this engine since June 16, 1922, account of not having competent inspectors in the service due to walkout of the shop crafts.

"Unable to make inspection account insufficient help due to strike.

"Not inspected account strike.

"Inspection not made July.

"Unable to make inspections or tests account strike conditions."

There are approximately 70,000 locomotives within the general purview of the act. A determination as to the extent to which the act currently is being violated would involve ascertainment of the condition of each locomotive and information as to the use being made thereof. The condition varies even as to the same locomotive from day to day. It is not possible for us to make this determination. The locomotives referred to are housed or repaired at approximately 4,600 different points and are operated on more than 265,000 miles of track. We are permitted by the act to have 50 district inspectors. During July last they made 717 separate inspections covering 4,085 locomotives and tenders on 102 railroads. The July activity of our inspectors is typical. The act does not contemplate that our inspectors shall inspect all locomotives. Section 6 of the act provides that the inspectors' "first duty shall be to see that the carriers make inspections in accordance with the rules and regulations established and approved by the Interstate Commerce Commission, and that carriers repair the defects which such inspections disclose before the boiler or boilers or appurtenances pertaining thereto are again put in service."

The services of our inspectors are general in character, and they are given such direction as is designed to bring about a compliance with the requirements by the carriers.

In pursuance of the duty of inspectors to see that requirements are complied with and that equipment is kept in safe condition, the inspectors deal with the varying situations and conditions in that manner which is deemed likely to accomplish the best practical results. The exercise of discretion and judgment is always involved. Obviously a locomotive may be defective and in need of repairs and yet be in a condition in which it is "safe to operate \* \* \* without unnecessary peril to life or limb." In many instances defects discovered and brought to the attention of carrier representatives are immediately repaired without retiring the locomotive. Under section 6 of the act notice is given of the more serious defects, and the locomotives are required to be retired.

While we are not in position to make report regarding the condition of all locomotives and the extent to which the requirements as to inspection and repairs are not being complied with currently, there are indications as to conditions generally, and certain deductions and conclusions may be drawn from the conditions disclosed by the work of our inspectors during the month of July last. At 717 different points they made personal inspection of 4,085 locomotives. Of these, 2,456 disclosed defects of the varied character mentioned above and more or less serious; 169 were found to be in such condition that they were not "safe to operate," and notices were served upon the carriers under section 6 of the act requiring them to be withdrawn from service. Of the others, 992 were found to have defects less serious in character, but in need of prompt

attention. In 1,295 cases defects, though not such as to give cause for immediate concern, were such as, in accordance with sound practice, should have attention.

It will be noted that it is the "use" of a locomotive not found to be in proper condition and safe to operate, and not the condition itself, which is a violation of the law. The withdrawal of locomotives for repairs, the restoration of locomotive service and the use of reserved or surplus locomotives are factors contributing uncertainty when considering the condition of locomotives in service to which the act applies.

When considering the extent of our inspection, cognizance should be taken of the fact that the act limits the number of inspectors to 50, and that the amount directly appropriated to carry out its provisions for the current fiscal year is \$290,000. This sum may be spent in monthly allotments of \$24,166.66, as provided in the anti-deficiency act of February 26, 1906. The amount expended during the month of July, 1922, in carrying out the requirements of the act was \$24,025.63, or within \$141.03 of the fixed monthly pro rata of \$24,166.66. Had the instructions of the Director of the Bureau of the Budget to set up a "general reserve fund of \$20,000" been in effect during the month of July, we would have incurred a deficit of \$1,525.63.

Mr. MICHENER. Just a question, Mr. McChord. These inspectors and the chief having this matter in charge, what relation, if any, did they have to the railroad organizations then on strike?

Mr. McCHORD. Many of them were or had been members of the railroad organizations—of the brotherhoods.

Mr. MICHENER. Well, they are not members at the time they are holding the job—the inspection job?

Mr. McCHORD. I do not know. How about that, Mr. Esch?

Mr. ESCH. I do not think they are.

Mr. McCHORD. I do not think they are.

Mr. MICHENER. The reason I asked the question was that it might be relevant if the purpose of the strike was to tie up railroad transportation and to reduce it to the minimum—reduce transportation to the minimum—and if the inspectors were members of those organizations, in sympathy with the purposes of the strike, they might be more interested in enforcing the law at this time, when the strike was on, than at any other time.

Mr. McCHORD. We regard these inspectors as absolutely loyal, not only to the commission but to their office and to the enforcement of the law. We do not find that they lent themselves to anything of that sort. Of course, they have the tremendous power to order these engines out, and the more engines that are ordered out of service the fewer we would have to haul the trains.

Mr. BIRD. At any time, Judge, in this matter was the malfeasance or the misfeasance or the dereliction of the inspectors in question?

Mr. McCHORD. Not by us.

Mr. BIRD. Was it by anybody, to your knowledge?

Mr. McCHORD. Well, I don't know. We had a great many complaints from the strikers and the striking organizations in which it was charged that the inspectors were not doing their duty.

Mr. GOODYKOONTZ. Judge, could you give us the date of the reports to the Attorney General as to the conditions complained of?

Mr. McCHORD. The cases that we have sent in?

Mr. GOODYKOONTZ. Yes.

Mr. McCHORD. Yes; I have those here somewhere. I have two communications here that we sent to the Attorney General for his



information, although I will say that in the enforcement of the safety-appliance law it has not been our custom to do that.

Mr. GRAHAM. I beg your pardon, Judge, I did not hear that.

Mr. McCHORD. I say that in the enforcement of the safety-appliance law we do not send these things to the Attorney General; we only send them to the district attorneys; but in this matter we concluded to let the Attorney General know, because we had understood that he wanted to know about it. On November 27 this communication was sent to the Attorney General.

Mr. YATES. This year?

Mr. McCHORD. This year, yes. This is all 1922. (Reading:)

SIR: There is inclosed herewith copy of a letter dated November 27, 1922, from the chief inspector of the Bureau of Locomotive Inspection to Hon. Henry Zweifel, United States attorney, Fort Worth, Tex., together with copy of the memorandum of facts referred to in the chief inspector's letter submitting information of violations by the Fort Worth & Rio Grande Railroad of the so-called locomotive inspection law. The commission is cooperating with the chief inspector in the selection of flagrant cases for presentation to your department, and stands ready to assist your department in this matter.

Very respectfully,

C. C. McCHORD, *Chairman*.

Now, on the 7th of December the following letter was sent to the Hon. Attorney General, Washington, D. C.

SIR: There is inclosed herewith copy of a letter dated December 7, 1922, from the chief inspector of the Bureau of Locomotive Inspection to Hon. Gramby Hillyard, United States attorney, Denver, Col., together with copy of the memorandum of facts referred to in the chief inspector's letter submitting information of apparent violations of the locomotive inspection law by Joseph H. Young, receiver of the Rio Grande & Western Railway Co.

Respectfully,

C. C. McCHORD, *Chairman*.

Mr. GOODYKOONTZ. What was the date of the first letter you read?

Mr. McCHORD. November 27.

Mr. GOODYKOONTZ. Now, Mr. Chairman, in view of the fact that the first letter was dated November 27 and the second December the 7th, and that the charges preferred by Mr. Keller bear date September 11, 1922, how can any of this evidence be germane or relevant to the issue before us?

Mr. RALSTON. I don't see, Mr. Chairman, how the matter can be prejudged at this stage of the case. I have a mass of testimony bearing upon the Attorney General's knowledge and connection with the enforcement of this law. We have just touched the outer fringe of the matter so far in the testimony of Chairman McChord.

Mr. MITCHENER. You will concede that if this is all there is to it, you would not make a case?

Mr. RALSTON. If there is nothing to it except the letter from the Commission and the Attorney General's reply I would concede there was nothing to it.

Mr. JEFFERIS. As a matter of fact these two letters that you wrote, Mr. McChord, were just for the information of the Attorney General, so that he would know that you had sent information to the respective district attorneys that you have mentioned in Texas and Colorado?

Mr. McCHORD. So he would know that the chief inspector had sent these, as the law requires him to do, to the district attorneys.

Mr. GRAHAM. I understood you to say that the Attorney General had asked for this information.

Mr. McCHORD. No; I did not say that. I knew, naturally, his interest in it.

Mr. GRAHAM. You said he wanted to know. That is the language you used.

Mr. McCHORD. I said I assumed he did want to know. I do not know how I got that, but I thought it was the proper thing to do—to let him be advised.

Mr. ESCH. Was not that a minute of the commission?

Mr. McCHORD. I believe that is so. I believe the commission in its minute directed me to do that.

Mr. RALSTON. I have the minute here.

Mr. McCHORD. Have you that minute?

Mr. RALSTON. Yes; I was about to call your attention to this minute of October 9, 1922, and read it into the record, if you will.

Mr. McCHORD. Very well. That is how I happened to do that.

Mr. RALSTON (reading):

OCTOBER 9, 1922.

Minute of the commission. Voted: That the Bureau of Inquiry be asked to render all possible assistance to the Chief of the Bureau of Locomotive Inspection in order that he may comply with the law with respect to calling to the attention of the proper district attorneys all violations of the law under their jurisdiction, and that the commission advise the Attorney General of the United States that the commission stands ready to aid him, if he desires, in the selection of flagrant cases in the matter of prosecution, and that copies of reports by the chief of the bureau to the United States attorneys be furnished the Department of Justice.

The CHAIRMAN. Let me repeat the question of my colleague here. This impeachment was brought on the 11th of September. Now, how can these proceedings that occurred long afterwards be pertinent to this inquiry charging him with having violated the law prior to that time?

Mr. RALSTON. If we were trying this case in a court of justice, we might be compelled—in the ordinary legal courts—we might be compelled to file an amended bill, but you gentlemen are determining the question as to the enforcement of the law.

The CHAIRMAN. I think the Senate has repeatedly held that you have got to keep inside of the rules. You must substantiate the charge that was publicly made upon the floor, and that must be in regard to something that had occurred prior to the date of the charges.

Mr. RALSTON. Well, gentlemen, granting the goodness of the technical situation——

The CHAIRMAN (interposing). I do not believe that is technical at all.

Mr. RALSTON. Well, let us differ upon that point. Granting that, however——

The CHAIRMAN (interposing). You accused the man at that time of having committed a crime, and now undertake to prove that he did something subsequent to that.

Mr. RALSTON. It will simply make it necessary, then, for Mr. Keller to go on the floor of the House and make a new charge and get the same result.

Mr. MICHENER. Mr. Keller now has more information than he did when he made his other charge. He said he had the proof then. He stated on several occasions that he had the proof, and now you are going to introduce proof of things transpiring subsequent to that time—proof which Mr. Keller could not have had at that time.

Mr. RALSTON. Of course, he could not then have stated this particular charge, that is true.

Mr. FOSTER. How is this proof of what he had in mind when he made that charge?

Mr. RALSTON. I don't know that he made it.

Mr. FOSTER. He made some charge, and how is this connected with that?

The CHAIRMAN. If he did not charge this, we would not have any jurisdiction to go on and investigate it. We are here investigating the charges that he made.

Mr. MICHENER. I think Mr. Ralston stated a while ago that if he did not connect it up we could strike it out.

Mr. GRAHAM. We don't want to waste our time on something that on its face is obviously untenable.

Mr. JEFFERIS. Mr. Chairman, it looks to me that there is no duty placed upon the Attorney General distinct from the district attorneys—of course, I am ready to hear the evidence, so far as I am concerned.

Mr. BIRD. Mr. Chairman, when I made the objection in the beginning to Judge McChord testifying at this time it was with this in view, the very thing that has arisen. The question now in my mind is whether or not Judge McChord has not shown affirmatively that it is not the duty of the Attorney General to initiate these proceedings.

Mr. BOIES. A letter written seven days ago would not have any bearing on this.

Mr. BIRD. No bearing under any circumstances.

Mr. GRAHAM. Yes; we can't go into something that might arise in that time.

Mr. BIRD. The question occurs to me as to whether or not Judge McChord has not shown affirmatively that the responsibility for the matter charged in section No. 4 is on the safety appliance division and the Interstate Commerce Commission, and that they did do their duty.

The CHAIRMAN. And the district attorneys.

Mr. BIRD. Under the district attorneys and not under the Attorney General.

Mr. RALSTON. Judge, how often are the carriers, by the regulations of the Interstate Commerce Commission, required to make boiler inspections?

Mr. McCHORD. Why, they are required to report to us every 30 days, at the end of each 30 days the inspections made.

Mr. RALSTON. Each 30 days?

Mr. McCHORD. Yes, sir.

Mr. BIRD. Inspections of the Government?

Mr. McCHORD. The carriers themselves.

Mr. BIRD. The carriers themselves?

Mr. McCHORD. You see, the law requires the railroads to make inspections on their own responsibility, except that the chief of

the division prescribes the rule for making the inspection and the Interstate Commerce Commission has to prove that. They require the carriers themselves to make these inspections and report them to the chief of the bureau.

Mr. RALSTON. Can you, without too much trouble, read the regulations of the Commission relative to boiler inspections?

Mr. BIRD. But Government inspections are independent of that; Interstate Commerce Commission inspections?

Mr. McCHORD. Government inspections are independent of that.

Mr. HERSEY. May I inquire, Judge, if I understand you to say that the regulations, and the procedure in any way requires that after the railroad companies have made inspections after 30 days, and filed them with the division, then, must your inspectors report to the Attorney General of the United States?

Mr. McCHORD. No; it is the duty of the chief inspector, when he finds that they are violating any of the rules——

Mr. BIRD (interposing). That is, the inspectors of your office?

Mr. McCHORD. The inspectors of the locomotive division.

Mr. BOIES. Report where?

Mr. McCHORD. He reports violation on the part of any of the railroads.

Mr. HERSEY. He does not report to the Attorney General?

Mr. McCHORD. To district attorneys.

Mr. HERSEY. But, he does not report to the attorney general, but to district attorneys.

Mr. McCHORD. No, the law says that he shall report to the district attorneys, and he must furnish the district attorney with sufficient evidence on which to base prosecutions.

Mr. GOODYKOONTZ. Information?

Mr. McCHORD. Yes. He files reports. Mr. Ralston asked me to read the regulations:

51. Report of inspection: Not less than one each month and within 10 days after each inspection, a report of inspection, Form No. 1, size 6 by 9 inches, shall be filed with the district inspector of locomotive boilers for each locomotive used by a railroad company, and a copy shall be filed in the office of the chief mechanical officer having charge of the locomotive.

52. A copy of the monthly inspection report, Form No. 1, or annual inspection report, Form No. 3, properly filled out, shall be placed under glass, in a conspicuous place in the cab of the locomotive before the boiler inspected is put into service.

Mr. RALSTON. Now, have those instructions been carried out within the last five months?

Mr. JEFFERIS. I do not know whether this would be evidence.

Mr. McCHORD. They have been, the regulations have been carried out, with the exception that there have been some failures. They have found some instances where they have failed to do that, and that is what we are trying to prosecute them for.

Mr. RALSTON. No; I am speaking now about making boiler inspections by the carriers themselves.

Mr. McCHORD. Some of them have, and some of them have not.

Mr. RALSTON. Some of them have failed?

Mr. McCHORD. Some of them have failed.

Mr. RALSTON. Has there been any attempt on the part of any legal authority to enforce and carry out those regulations?

The CHAIRMAN. That is too general. I object to that. What attorney?

Mr. RALSTON. I will say by the Attorney General.

Mr. McCHORD. You mean, are they doing that now? I understand that they are all doing this now.

Mr. RALSTON. All doing what?

Mr. McCHORD. All making these reports.

Mr. RALSTON. But for a period they were not?

Mr. McCHORD. For a period of time they were not, and that is what the chief of the division is working up evidence on, to report to the district attorneys, to prosecute them for.

Mr. FOSTER. In other words, Judge, prosecute them for failure. There might be two failures. There might be a failure to inspect, and a failure to report. In other words, you mean that you might not be able to report clearly that they are not inspecting, they might be making inspections, but failing to make the report?

Mr. McCHORD. Yes, sir.

Mr. MONTAGUE. But as I understand, the Interstate Commerce Commission requires them to make inspections and those inspections are to be made by the railroads themselves.

Mr. McCHORD. Yes.

Mr. MONTAGUE. And report made to the Interstate Commerce Commission.

Mr. McCHORD. Report made to the chief of the locomotive division.

Mr. MONTAGUE. There are two inspections, one official inspection made by you.

Mr. McCHORD. That is it.

Mr. MONTAGUE. And another inspection made by the railroads, which in turn communicate that to the bureau?

Mr. McCHORD. Yes; that report is made, and if there is any failure in any particular he reports that to the district attorney.

Mr. MONTAGUE. That is, if the railroads fail to make that report?

Mr. McCHORD. Yes. But he does report to us the violations or failures within the time, and we report that to Congress in our annual report.

Mr. MONTAGUE. Did you ever report that in any way to the Attorney General?

Mr. McCHORD. No; there is no law that requires that. The law does not require us to report to anybody except to Congress. It is made the duty of the chief of the bureau to make reports of the violations of the law to the district attorney.

Mr. CHANDLER. Mr. Ralston stated that there had been information for three months in the hands of the Attorney General. You did not put that information there, did you?

Mr. McCHORD. No, sir.

Mr. CHANDLER. It is not your duty to do that, and you never do it?

Mr. McCHORD. No, sir.

Mr. GOODYKOONTZ. Have there been any reports of dereliction of duty on the part of the district attorneys?

Mr. McCHORD. It is the duty, so far as the beginning of these cases, that is made the duty of this bureau to furnish them with this information.



**DISCUSSION OF RELEVANCY OF EVIDENCE SUBMITTED ON SPECIFICATION NO. 4.**

Mr. RALSTON. I can prove by the next witness on this next proposition that the necessary information has been in the hands of the Attorney General since about the 11th of October.

The CHAIRMAN. That has been in the Attorney General's hands?

Mr. RALSTON. Yes.

Mr. GRAHAM. Mr. Ralston, let me ask you a question before we pass over this subject. In your argument you stated that it was the duty, and that there was a particular requirement on the Attorney General to enforce the laws, to go into a court of equity and get an order compelling the inspection by the railroads. In other words, that would be proceeding in an equity court in the nature of a mandamus?

Mr. RALSTON. Yes, sir.

Mr. GRAHAM. Now, since the chairman of the Interstate Commerce Commission has told us that the roads are now complying with that requirement what can the commission do, how on earth could they get a mandatory injunction in such a case as that?

Mr. RALSTON. I want to read the bill, and I am sure that you will see that, if you will wait until I get my evidence in complete.

Mr. GRAHAM. Isn't the remedy now to sue for penalty for the commission of these acts?

Mr. RALSTON. Oh, if we carried it out under the law the remedy would be to sue for failure or past offenses.

Mr. GRAHAM. And so far as the danger to life and property, as you invoke it, is concerned, is that not guaranteed by the extraordinary power that rests in the inspectors or the chief of them to order the defective engines when they become defective out of use?

Mr. RALSTON. We think not.

Mr. GRAHAM. You think not. Well, the Interstate Commerce Commission thinks it is.

Mr. RALSTON. We think that we will be able to show you that it is not. We will show you that the condition at the present time is a frightful one, due to improper inspections as required by law, on the part of the railroads.

The CHAIRMAN. Is not the condition due to another thing. Nobody has mentioned a strike. Is it not a fact that the strike prevented the performance of these duties?

Mr. RALSTON. The strike did not prevent them, because a third to a half of the roads of the country have no strikes.

Mr. HERSEY. Now?

Mr. RALSTON. Now.

Mr. HERSEY. But they did have when this dereliction was going on.

Mr. RALSTON. The other roads can make their own terms and get their men.

Mr. HERSEY. That is true now, but it was not during the strike.

Mr. JEFFERIS. Don't you think that it is up to Congress to pass some kind of a mandatory law, rather than expecting the Attorney General to create some law?

Mr. RALSTON. We do not expect the Attorney General to create any law, and I want to call your attention to just this one point in

this connection: We have had rate laws all over the country and they have carried penalties with them, and there has been and they will probably be able to, by appropriate proceedings, to recover penalties, but it has never been held that in view of the fact that there was a penalty provided that there was anything to prevent them from going into court with injunctions and compelling the railroads to obey the law. That is precisely what they have done.

Mr. GRAHAM. I know, but certainly as the law is at the present time they could not go into a court of equity and get an order against a corporation that is now performing and meeting all of the requirements of the commission.

Mr. RALSTON. No.

Mr. GRAHAM. That is Judge McChord's testimony.

Mr. McCHORD. I might qualify that to this extent, that I have heard nothing from the chief of the bureau with respect to that laxity within the last month, and I assume that he would have reported to me if it still existed.

Mr. FOSTER. It seems that the number of defectives are decreasing each month, according to the reports.

Mr. BOIES. Mr. Ralston, you say that the Attorney General has information covering this subject?

Mr. RALSTON. Yes, sir.

Mr. BOIES. Has that come from a recognized legal channel of the Government or from private persons?

Mr. RALSTON. It has probably come through those whom you will consider private persons, but nevertheless it is definite and conclusive.

Mr. JEFFERIS. Are they private persons or somebody connected with the Interstate Commerce Commission?

Mr. RALSTON. Private organizations.

Mr. MICHENER. Private organizations?

Mr. RALSTON. Yes.

Mr. MICHENER. Railroad organizations?

Mr. RALSTON. Yes. And I should perhaps state to the committee that I want to call as my next witness on that Mr. Stevenson. Mr. Stevenson is the attorney for the locomotive firemen. I have also asked that Mr. Horn be called. He is an attorney for the locomotive engineers.

Now, you gentlemen understand that neither of those organizations are on strike, but day by day, almost, their members are being slaughtered because of the condition which exists.

The CHAIRMAN. Now, wait a minute. I want to ask you a question. Now, if you have got any testimony or any authority that would aid in establishing that the Attorney General is responsible in any way for this, I think that we ought to have it, if it will connect him up in any way, it seems to me that we ought to have it, and not waste our time with argument. We should have some testimony.

Mr. RALSTON. I could not be expected——

The CHAIRMAN. It is a question of law. What have you got in the shape of law, what authorities have you got under which the

Attorney General could have done anything like you claim could have been done?

Mr. RALSTON. That is, prevented by injunctions?

The CHAIRMAN. Yes.

Mr. RALSTON. I have just referred to a class of cases with which I have no doubt the members of this committee are familiar.

The CHAIRMAN. What class of cases?

Mr. RALSTON. Every member of this committee is familiar with the question of rates. Where rate laws are violated and where the attorney generals of the several States have gone into their courts, or United States courts, at any rate the attorneys of the several States have gone into court and by mandamus proceedings or injunctions compelled observance of the law.

The CHAIRMAN. Observance of the rate?

Mr. RALSTON. Observance of the rates fixed by law.

Mr. BOIES. Is that not lodged solely with the Interstate Commerce Commission?

Mr. RALSTON. No.

Mr. BOIES. You would not expect reports from them to the Attorney General if they were not necessary?

Mr. RALSTON. I refer to the rate question by way of presentation and without any attempt to discuss what might be done on that particular point, but it would not be within the province of the Interstate Commerce Commission.

Mr. JEFFERIS. Mr. Ralston, you say that the rate cases are taken up by the attorneys throughout the country and enforced?

Mr. RALSTON. Yes, sir. I did not say whether or not they were district attorneys. I said attorneys for the several States, attorneys general for the several States.

Mr. GOODYKOONTZ. Isn't it true that the public service commissions acts expressly and specifically provide that in the event the regulations and rules relating to freight rates promulgated by the commission are not complied with then that the Attorney General may proceed by mandamus injunction?

Mr. JEFFERIS. That is, the attorneys general of the States?

Mr. GOODYKOONTZ. Yes. But, that is a State matter. Could the Attorney General of the United States proceed in that manner without special authority?

Mr. RALSTON. He had that authority.

Mr. GRAHAM. He could not proceed to enforce a special rule by equity proceedings when the rule itself is being observed. That is the crux of this situation.

Mr. RALSTON. I beg your pardon.

Mr. GRAHAM. According to the evidence.

Mr. RALSTON. According to the evidence? That is a point on which we shall need supplemental testimony.

Mr. GRAHAM. Well, that is the crux of the situation according to the testimony.

The CHAIRMAN. Mr. Ralston, on page 43, specification No. 4, serial 41, this language is used in the specification, "and charge the Attorney General with the enforcement of these laws," referring to

the inspection of railway locomotives. Now, where is that law that substantiates the allegation that he is charged with that?

Mr. RALSTON. You mean the specific statute?

The CHAIRMAN. Specific statute charging him with that.

Mr. RALSTON. He is charged with the enforcing of the laws when violations are brought to his attention, precisely as he is charged with the enforcement of every other law where violations are brought to his attention.

The CHAIRMAN. Then, you have no specific law charging him with that enforcement, and you are only relying on the general proposition that the Attorney General is charged with the enforcement of all laws?

Mr. RALSTON. You do not need any special law. He is charged with the enforcing of the law.

The CHAIRMAN. Let us proceed. If you have any questions to ask Mr. McCord proceed.

#### TESTIMONY OF HON. C. C. McCHORD—Resumed.

Mr. RALSTON. I would like to make a statement in connection with this matter, but I will put it in the form of a question.

Judge McChord, can you state approximately how many locomotives there are in the United States?

Mr. McCHORD. About 70,000.

Mr. RALSTON. And how many locomotives on the average can be examined by your inspectors during the course of a month?

Mr. McCHORD. I have it here. Between five and six thousand.

Mr. RALSTON. So that only a relatively small percentage are examined by the inspectors themselves?

Mr. McCHORD. Undoubtedly so. As set forth before, we only have 50 inspectors. We asked some time ago, with the President's recommendation, that we be given 50 more—15 for the safety appliance division and 35 for the locomotives—but it was not granted.

Mr. FOSTER. The House granted it and the Senate cut it out?

Mr. McCHORD. The Senate cut it out. I understand that it went out in conference because it was legislation on the appropriation bill. Now, I want to get clear in the minds of the committee just this: The Interstate Commerce Commission should be held responsible for any dereliction of duty or anything that it fails to do that it ought to do. Likewise, the chief of the locomotive division and his inspectors; but, as I have indicated, during the stress of July and August it was as much as these inspectors could do to watch the engines, to inspect the engines, let alone take up prosecutions in court, and those things, of course, followed after the thing could be done; and just as soon as it could be gotten at, the chief of the division and his inspectors went at it, and they are gathering all of the evidence that they can get, and as I say, not being familiar with the procedure, never having had anything to do with these prosecutions before, the evidence they brought in was not sufficient, and we undertook to help them by detailing our bureau of inquiry and the bureau of accounts to assist them, and as fast as those things are being brought in the prosecutions go out.

Mr. RALSTON. Just one or two to you the other day I asked

Judge, in writing a note kindly furnish the date

and the text of any letters from the Attorney General or his subordinates calling upon the Interstate Commerce Commission or any of its branches for information relative to the nonobservance by the railroads of the inspection laws, inspection laws of the United States and regulations thereunder passed by the Interstate Commerce Commission. Can you furnish that data to this committee?

Mr. JEFFERIS. When did you write that?

Mr. RALSTON. I wrote that on December 11.

Mr. McCHORD. I think that this correspondence should go into the record, if the committee has no objection—Mr. Ralston's letter to me and my reply to him.

The CHAIRMAN. When was that written?

Mr. RALSTON. On December 11, 1922.

The CHAIRMAN. And it is relative to matters occurring subsequent to the 11th of September?

Mr. RALSTON. Yes.

Mr. McCHORD. It says:

The date and text of any letter from the Attorney General or his subordinates calling upon the Interstate Commerce Commission or any of its branches for information relative to the nonobservance by the railroads of the restriction laws of the United States and regulations thereunder passed by the Interstate Commerce Commission.

Mr. RALSTON. Are you at liberty to furnish that information to the committee?

Mr. McCHORD. As I understand——

Mr. MICHENER (interposing). I would like to ask that that letter and the answer go into the record. The other has gone in.

Mr. McCHORD. Do you want me to read it, or just put it in?

Mr. MICHENER. Read it.

The CHAIRMAN. Read it.

Mr. McCHORD (reading):

"December 8, 1922"—It is addressed to me as chairman of the commission—

DEAR SIR: Referring to our conversation of to-day, I respectfully ask that I may be supplied with the following information.

I will state that Mr. Ralston came there and told me that he wanted certain information, and I suggested that he write me a letter so that he could have it intelligently.

Referring to our conversation of to-day I respectfully ask that I may be supplied with the following information:

1. The date and text of a resolution of the commission with reference to enforcement, etc., of the railway inspection law, the date being about August 11 or 12, 1922.

Now, we have furnished that to you.

Mr. RALSTON. The date was not what I thought it was, but you have furnished it, and it has already been read.

Mr. McCHORD. That was the minutes of the commission.

Mr. RALSTON. Yes, sir.

Mr. McCHORD (reading):

2. The text of a communication sent by your commission to the President relating to this subject matter and being on or about August 15, 1922, and President Harding's answer thereto.



Mr. HOWLAND. That is in.

Mr. McCHORD. That is in.

3. The date and text of any letter from the Attorney General or his subordinates calling upon the Interstate Commerce Commission or any of its branches for information relative to the nonobservance by the railroads of the restriction laws of the United States and regulations thereunder passed by the Interstate Commerce Commission.

4. The date and text of any letter from the Attorney General's office asking information relative to certain occurrences at Needles, Calif.

That has not been furnished.

I should highly appreciate it if I might have this information at your convenience to-morrow.

Very respectfully,

JACKSON RALSTON.

I replied the same date to Mr. Ralston, after his conference at the commission.

DECEMBER 11, 1922.

JACKSON H. RALSTON, Esq.,

*Evans Building, Washington, D. C.*

DEAR SIR: I have brought to the attention of the commission your letter of 8th instant in which you ask for the following information—

Then I quote Nos. 1, 2, 3, and 4 and continue:

I understand the word "resolution," used in your request No. 1, is intended to cover a vote of the commission minuted in its records, and that the word "restriction," contained in your No. 3, should be changed to read "inspection."

In the conversation to which you refer I understood you to say that this information was desired by you for presentation to a committee of the House of Representatives in the course of your professional employment. The commission will be prepared to furnish this information upon request of the House or a committee of the House. The manifest impropriety of disclosing a communication from the President without his sanction is obviated in this instance by the fact that the correspondence in August, to which you refer in your request No. 2, was made public at the time.

Very truly yours,

C. C. McCHORD, *Chairman.*

Then, Mr. Ralston, after he got this, telephoned me and said that we had conceded that some of it was proper to deliver to him and requested that it be done. I then addressed this letter to him:

DECEMBER 11, 1922.

JACKSON H. RALSTON, Esq.,

*Evans Building, Washington, D. C.*

DEAR SIR: Supplementing my letter of this date, I am authorized by the commission to transmit herewith copy of the commission's minute of October 9, 1922, also copy of my letter to the President of August 15, 1922, and his reply of the same date.

I am transmitting this to you as indicated in my letter for the reason that the minute is a public record and my letter to the President and his reply to me were made public by authority on the date indicated and were published in full by the press on the following date.

This, I believe, complies with your request in our conversation over the telephone this afternoon.

Yours very truly,

C. C. McCHORD, *Chairman.*

Mr. RALSTON. Now, my question, Mr. McChord, is, whether you could furnish, or would be willing under the instructions of the committee, to furnish Nos. 3 and 4?

Mr. McCHORD. I would do that at the instruction of the committee. The only communication I have from the Attorney Gen-

eral's office is December 2, other than a request for information in the Needles case, September 5 and December 2.

Mr. RALSTON. Will you furnish the committee with a copy of the letter of September 5?

Mr. McCHORD. That is, if it is the committee's desire. We do not do these things without instructions from the committee.

Mr. FOSTER. I think, for a proper understanding of what the contents are, we ought to be advised of the purpose of this.

Mr. MICHENER. That Needles—is that where the newspapers said the train crews left the trains and left the people out in the desert?

Mr. RALSTON. Yes, sir.

Mr. MICHENER. What bearing would that have on this?

Mr. RALSTON. I will submit that entirely to the committee. I do not think it has a direct bearing. The only thing is that the only communication up to about the 1st of December from the Attorney General's office relates not to any of the offenses by the railroad, but to a single occurrence at Needles on September 5, or about that time.

Mr. MICHENER. That is, he was objecting to the railroad people running trains and leaving those trains out there.

Mr. RALSTON. He was at no time concerned with the enforcement of the inspection laws, but greatly concerned by a misunderstood event at Needles.

Mr. JEFFERIS. That all comes back to the question as to whether there was any duty of law upon him.

Mr. RALSTON. I am not going to press that.

The CHAIRMAN. Is that all?

Mr. JEFFERIS. Does the committee want to see this or not?

The CHAIRMAN. No; I do not think so.

Mr. MICHENER. My position will be this, and I want to put it in the record: That if Mr. Ralston thinks what the Attorney General said about the conditions at Needles at that time would shed any light on anything before the committee, I think it should be brought in.

Mr. RALSTON. No; I am not going to press it.

Mr. MICHENER. Then you won't take the position we have denied you an opportunity to bring it here?

Mr. RALSTON. No; if I do not press a thing. I am trying to press all of my rights as far as I can.

Mr. FOSTER. Is that your position on the other request, too, that has not been furnished?

Mr. RALSTON. No.

Mr. JEFFERIS. Do you want the one of December 2?

Mr. RALSTON. That has been furnished. The other was for information as to whether there were any communications and the answer of the Attorney General was there were none until about December 2.

Mr. HOWLAND. Judge McChord, if you will kindly favor me with a few moments, I won't detain you very long. I would like to ask you, Judge, if on or about November 25 a copy of a circular letter, which had been mailed to all of the district attorneys of the United States, was sent over for your information?

Mr. McCHORD. It was, and I have that.

Mr. HOWLAND. Will you let us see that?

Mr. McCHORD. No; I have not that with me; I recall the circular; I left it on my desk.

Mr. HOWLAND. I will read the circular letter that was sent to all the district attorneys and ask the judge if that is a correct copy and offer it.

Mr. GRAHAM. Sent by whom?

Mr. HOWLAND. The Attorney General—a copy for the information of the commission of a letter that was sent to all the district attorneys throughout the United States.

Mr. HICKEY. Why not submit the letter to Judge McChord?

Mr. HOWLAND. I want to read some of these things into the record.

Mr. HICKEY. He ought to identify the letter before you read the the letter.

Mr. HOWLAND. I do not know whether he can identify it. We have not taken up so very much of the committee's time this afternoon.

Mr. HICKEY. No.

Mr. McCHORD (after examining paper). I recognize that as being similar to the communication that the Attorney General sent me.

Mr. HOWLAND. You are willing to allow me to read it into the record, with that identification?

Mr. McCHORD. Yes.

Mr. HOWLAND (reading):

DEPARTMENT OF JUSTICE,  
Washington, D. C., November 25, 1922.

Circular No. —.

I do not know what the number is.

*To all United States attorneys:*

It has been called to the attention of this department by the bureau of locomotive inspection of the Interstate Commerce Commission that numerous violations of the safety-appliance laws have arisen in the past few months and that, in conformity with section 9 of the boiler inspection act the I. C. C. (the Interstate Commerce Commission) is forwarding to you duly verified information of these violations.

Vigorous enforcement of all the safety appliance laws and locomotive and boiler inspection acts is urged. When such cases are reported to you give them the earliest possible hearing, prosecute vigorously, and accept no compromise therein.

Respectfully,

H. M. DAUGHERTY, *Attorney General.*

Mr. MICHENER. What date is that?

Mr. HOWLAND. November 25, 1922. I will furnish the stenographer with a copy.

Mr. McChord, I will ask you if the Attorney General has, so far as you know, in connection with your department, ever failed or neglected to enforce any law or to cooperate with you in that matter so far as you know?

Mr. McCHORD. Never.

Mr. HOWLAND. That is all.

Mr. FOSTER. In that connection I notice that that letter of November 25 antedates by two days the dates of the two letters from the Interstate Commerce Commission to the Attorney General of November 27 and December 2.

Mr. GRAHAM. That is, the Attorney General's letter antedates the others?

Mr. RALSTON. I find there is just one more question I would like to ask Mr. McChord. Did you at any time have any calls from Mr. Horne and Mr. Stevenson, representing their respective organizations?

Mr. McCHORD. Yes. They came to see me and said they had had some conference——

Mr. GRAHAM. Whether or not he had had a conversation with Mr. Stevenson I submit is wholly irrelevant and immaterial and there would be no excuse for our listening to it.

The CHAIRMAN. Objection sustained.

Mr. RALSTON. That is all. Now, going back to the charge that we had under consideration, I want to ask Mr. Maurice Joyce to take the stand.

### TESTIMONY OF MR. MAURICE A. JOYCE, WASHINGTON, D. C.

(The witness was duly sworn by the chairman.)

Mr. GRAHAM. Your full name?

Mr. JOYCE. Maurice A. Joyce.

Mr. RALSTON. Mr. Joyce, you, I believe, were formerly United States deputy marshal here?

Mr. JOYCE. Yes, sir; I was United States deputy marshal and crier to the Supreme Court of the District for 34 years.

Mr. RALSTON. And when did your employment in those capacities cease?

Mr. JOYCE. It ceased at the beginning of the war, when I went to the Department of Justice as an agent under Mr. Bielaski.

Mr. RALSTON. And when did your connection with the department cease, if it has ceased?

Mr. JOYCE. It ceased the latter part of July, when I resigned.

Mr. RALSTON. July last past?

Mr. JOYCE. Yes, sir.

Mr. RALSTON. During the course of your employment in the Department of Justice were you called on to make an investigation into a complaint against one Louis Beekman, of New Jersey?

Mr. JOYCE. Yes, sir.

Mr. RALSTON. About when did that occur?

Mr. JOYCE. It has been a year ago, I guess. I can not say accurately; I have nothing on me that would show. I have some papers some place that would give the date, but my report is in the Department of Justice and will give it.

Mr. RALSTON. Was it when Mr. Burns became inspector?

Mr. JOYCE. Yes, sir.

Mr. RALSTON. Or was put at the head of the bureau, I mean?

Mr. JOYCE. Yes, sir.

Mr. RALSTON. Will you give, in his own language, your instructions relative to the case?

Mr. JOYCE. Now, it has been some time ago; I do not know whether I can state it.

The CHAIRMAN. Does this come within any of the specifications?

Mr. HOWLAND. There is nothing in these specifications.

Mr. GRAHAM. There is nothing under the thirteenth.

Mr. RALSTON. I think, perhaps, I should state frankly, and even state it openly, exactly what I have in mind.

(After argument.)

The CHAIRMAN. Unless the committee desires to hear it——

Mr. BOIES (interposing). Mr. Chairman, I object.

Mr. YATES. You stated, Mr. Ralston, that this was not under any of the specifications?

Mr. RALSTON. Only as opposing, as I have said——

Mr. YATES (interposing). No; answer the question; you said this was not under any of the specifications, did you not?

Mr. RALSTON. No; it is not under the specifications, except in the sense——

Mr. YATES (interposing). I object, Mr. Ralston, to your continually using epithets here——“rotten,” and this thing, and that and the other thing, and taking every opportunity to make a speech. We are trying to get at the facts, as you have observed. These epithets ought to be stopped.

Mr. RALSTON. Well, that is a matter of opinion.

The CHAIRMAN. Let us go ahead with the testimony.

Mr. RALSTON. We will have to recur, then, if you please, to Mr. Stevenson. I think it will take several hours to finish with him; and I will, if it is the desire of the committee, finish with him this evening.

Mr. GRAHAM. It may not take as long as you think.

The CHAIRMAN. That ends 13, does it?

Mr. RALSTON. I am just informed that Mr. Stevenson is out of the room; that he went to the hotel to bring his papers down; and I suppose he will be here, perhaps, in 20 minutes or something like that; but if the committee feels that we have reached a good stopping place, we will be glad to take it up to-morrow morning.

The CHAIRMAN. We do not want to stop; we want to go on.

Mr. FOSTER. Does the Attorney General care to be heard on No. 13 before we go to No. 4?

The CHAIRMAN. Have you anything further, Mr. Ralston, on No. 13?

Mr. RALSTON. At this time, none; at this time I have nothing further on No. 13.

Mr. GRAHAM. Well, you must either close on that at this time or else state what you have in reserve.

Mr. RALSTON. I can not state what we have in reserve.

Mr. GRAHAM. Well, I must insist upon that; if you want to reserve anything, you must state what you have in reserve.

Mr. RALSTON. I have things in reserve, but I can not state them now.

Mr. GRAHAM. But if you were in court you would have to state what you have in reserve, or else you would have to proceed.

Mr. RALSTON. In court, it is different.

Mr. GRAHAM. Yesterday you stated that on No. 13 you had two witnesses to be called to-day.

Mr. RALSTON. Yes.

Mr. GRAHAM. Have you anything additional to-day?

Mr. RALSTON. Yes.

Mr. GRAHAM. What is it?



Mr. RALSTON. That I can not disclose to you. If the committee wants absolutely to foreclose me from further testimony, of course it is in their power to do so.

Mr. GRAHAM. We have not tried to foreclose you, as you know; but, on the contrary, we have admitted matter into this record that nobody would listen to under these specifications, except to close your lips against any complaint against the exclusion of evidence.

Mr. RALSTON. I am afraid, Mr. Graham, with all due respect, that I am not the only person who is making speeches.

Mr. BOIES. You do not claim, Mr. Ralston, that you will have any more testimony on specification 13, do you?

Mr. RALSTON. I do not claim; I assert the possibility. This is an investigation which is in order at this time.

The CHAIRMAN. I do not think so, because you have made charges, charging a crime against the Attorney General; you are expected to know what you were charging him with at the time the impeachment occurred, on the 11th of September.

Mr. RALSTON. Yes, sir.

The CHAIRMAN. Now, so far as I have been able to read the proceedings in other cases of this kind, committees have largely followed the ordinary rules of evidence, and those presenting charges have not thought of any such thing as bringing in a lot of new claims and new evidence, and all that sort of thing; they tried such charges just as they try cases in a court of justice; they examine the witnesses under the rules of law; they may have been a little more liberal. And we have been exceedingly liberal here; you know that a great deal of this testimony never could have gone in in a court of law.

Mr. RALSTON. I think practically every bit of the testimony is legal, but the method of proof would have been different in court.

The CHAIRMAN. I should think it would have been different.

Mr. BIRD. Mr. Chairman, now that Mr. Ralston has put in all that he has at this time, why not put on the Attorney General's witnesses in rebuttal?

The CHAIRMAN. That is what I was going to suggest.

Mr. RALSTON. May I call the attention of the chairman to the fact that there is one unsettled question, and that is the reading of the exhibits which were made part of Mr. Macauley's testimony according to the very terms of the letter.

We have had part of his letter, but we have not had the exhibits.

The CHAIRMAN. Mr. Howland, do you desire to be heard now?

Mr. HOWLAND. No; if your honor please, we would like to go ahead and put in our testimony on 13, if the plaintiff—as we might be permitted to call him—has rested his case.

The CHAIRMAN. Well, I hold that unless he gives a good reason why he should have it reopened, No. 13 is closed, because it seems to me that he should stand in the same position that he would in a court; he might afterwards come in in a court and make a showing that would entitle him to be heard again.

Mr. RALSTON. I am perfectly willing.

The CHAIRMAN. And, of course, if he puts himself in that position, under the ordinary rules, he might be permitted to put in additional testimony.

Mr. RALSTON. I am perfectly willing to make the necessary showing if I want to put in additional testimony.

Mr. HOWLAND. Would it be proper to ask for a recess for 15 minutes, Mr. Chairman?

The CHAIRMAN. Yes; we will take a recess for 15 minutes.

(A recess of 15 minutes was taken.)

AFTER RECESS.

Mr. HOWLAND. Mr. Chairman, is it not the order for me to go ahead on No. 13?

The CHAIRMAN. No. 13, if you please.

Mr. HOWLAND. I will call Senator Hiram W. Johnson, of California.

**TESTIMONY OF HON. HIRAM W. JOHNSON, A SENATOR FROM THE STATE OF CALIFORNIA.**

(The witness was duly sworn by the chairman.)

Mr. HOWLAND. Senator, give us your name, address, and office.

Senator JOHNSON. Hiram W. Johnson, San Francisco, Calif.; at present United States Senator.

Mr. HOWLAND. I will ask you, Senator, if you are acquainted with William J. Burns?

Senator JOHNSON. I am.

Mr. HOWLAND. When did you first become acquainted with him?

Senator JOHNSON. Just after the fire in 1906.

Mr. HOWLAND. In what connection did you become acquainted with him?

Senator JOHNSON. In connection with the graft prosecution, so called, in the city of San Francisco.

Mr. HOWLAND. You may state to the committee how long and how intimately you knew him in that connection.

Senator JOHNSON. For at least two years there, intimately.

Mr. HOWLAND. From that time down to the present how well have you known him?

Senator JOHNSON. I have met him casually and at infrequent intervals since then.

Mr. HOWLAND. I will ask you, Senator, what, in your opinion, is the character and integrity and ability of William J. Burns as an organizer and an investigator?

Senator JOHNSON. In my opinion, the very best.

Mr. HOWLAND. At the time, or shortly previous to his appointment to chief of this Bureau of Investigation in the Department of Justice did you have occasion to express your opinion along those lines to the Attorney General?

Senator JOHNSON. I did.

Mr. HOWLAND. And you recommended his appointment?

Senator JOHNSON. I did.

Mr. HOWLAND. Did you make the recommendation in writing or orally?

Senator JOHNSON. My recollection is orally.

Mr. HOWLAND. As near as you can remember, will you state to the committee, in substance, your recommendation to the Attorney General?

Senator JOHNSON. I told him the experience that we had had with Burns in San Francisco in the graft prosecutions; that I considered him one of the ablest detectives I had ever known; that I believed him to be a man of character and integrity; and that he would in every respect possess the requisite qualifications for the office to which he aspired.

Mr. HOWLAND. You may inquire, Mr. Ralston.

Mr. RALSTON. Senator, were you familiar with the fact at that time that he had received the very severest condemnation from Attorney General Wickersham?

Senator JOHNSON. It is possible that I was, because during the graft prosecution Mr. Heney and Mr. Burns were pretty thoroughly canvassed in San Francisco; but I had no recollection of the matter and no thought of it at the time that I spoke in reference to Mr. Burns.

Mr. RALSTON. Have you ever read the report of Attorney General Wickersham?

Senator JOHNSON. I do not think I ever did.

Mr. RALSTON. I would like to have you read it, and to know if, after reading that, your opinion would be shaken.

Senator JOHNSON. Well, does this rest upon a question of veracity between Mr. Burns and Mr. Wickersham? I have no hesitancy in saying I would take Mr. Burns's word. [Laughter.]

Mr. RALSTON. It rests more largely upon the result of careful examination and records of the department.

Senator JOHNSON. Well, of course, I expressed no opinion of that sort at all. I do not wish you to understand me as expressing such an opinion. I knew Burns; I did not know Wickersham. I had been with Burns through the fire in San Francisco, at a most trying time; it was a time that tried every man that was connected with the graft prosecution. The men that were in that graft prosecution began with the lowly and they reached the very highest; and it divided the community into two classes. I saw Burns withstand the pressure and withstand the fire; and because of that, sir, I gave my recommendation, and because of my relations with him at that particular time.

Mr. RALSTON. Did you know at that time that he had, for reasons satisfactory to the authorities, been excluded from business in Canada?

Senator JOHNSON. No, sir.

Mr. RALSTON. Did you know at that time that he was in trouble with the authorities in Atlanta, Ga.?

Mr. MICHENER. Now, just a minute; I object to that.

Mr. RALSTON. I want to find how extensive his knowledge of the man is.

Mr. MICHENER. That is assuming something to be in proof which is not in proof.

Mr. RALSTON. Yes.

Mr. MICHENER. And I object to that line of questioning until the witness is shown that these things did exist; if he knows that there

was such trouble there, or such conditions, then he might be competent.

Senator JOHNSON. I have an indistinct recollection of a case in Georgia, where Mr. Burns represented one side, and I read some press reports of that, I think. Was it not the celebrated Frank case?

Mr. RALSTON. Yes; his conduct in that case.

Senator JOHNSON. I have a recollection of having read some newspaper reports concerning that case.

Mr. RALSTON. Without having examined into the truth of the statements?

Senator JOHNSON. Oh, no; I know nothing of that, sir.

Mr. RALSTON. Your knowledge of Burns, then, was confined simply to your experience with him in this single—or multiplied, if you please—graft prosecution in San Francisco?

Senator JOHNSON. Oh, yes; that was where I first met him and where my knowledge of him was derived.

Mr. RALSTON. And it was upon that, simply, that you made your recommendation to Mr. Daugherty without other information?

Senator JOHNSON. Oh, I will not say wholly that. You see, there was an acquaintance that became intimate, lasting a couple of years. That acquaintance was continued subsequently, without the intimacy. But all of the cumulative ideas that I had conceived respecting Burns entered into my recommendation.

Mr. RALSTON. When you drew your comparison between Mr. Burns and Mr. Wickersham, did you draw that from your personal acquaintance with Mr. Wickersham?

Senator JOHNSON. Not at all; I do not know; it was because I knew Burns and I did not know Wickersham.

Mr. RALSTON. Then you were not reflecting upon Attorney General Wickersham in making that remark?

Senator JOHNSON. No; I am not reflecting upon him, of course. But here is one man that I saw going through fire; and another man whom I did not know; as between the two, on a question of veracity, I would take the man I stood with and that I have seen going through the fire.

Mr. FOSTER. Not that you love Cæsar less, but Rome more.

Senator JOHNSON. Put it that way if you please.

Mr. RALSTON. That is all.

Mr. HOWLAND. Senator, if I read my history correctly, you at one time were Governor of the State of California?

Senator JOHNSON. Yes, sir.

Mr. HOWLAND. Did you have any occasion to pay out money—State funds—in connection with a reward for the arrest and conviction of the McNamaras?

Senator JOHNSON. Yes; I recall now that——

Mr. RALSTON (interposing). I think I shall have to object to that, Mr. Chairman. I do not see what that has to do with this case; it is going a long ways afield.

The CHAIRMAN. I think that is subject to objection.

Mr. GOODYKOONTZ. Everything else, practically, has gone in.

Mr. CHANDLER. The McNamara case has been in.

Mr. BOIES. The chairman says you might answer.

Mr. HOWLAND. Yes; go ahead.

Mr. BOIES. Subject to the objection.

Senator JOHNSON. I do not want you to confound the duties that were mine in that regard. I did not pay out any money.

Mr. HOWLAND. I understand.

Senator JOHNSON. As governor of the State there came to me a bill passed by the legislature, I think, designed to give a reward to Mr. Burns that had been offered by the legislature, and which he had never received. That bill I signed, and upon my signature I think ultimately the money was paid, or, rather, upon the approval of the act, in the usual course of administration, the money was paid.

Mr. HOWLAND. And that was the reward for services in the McNamara case?

Senator JOHNSON. That is my recollection; yes, sir.

Mr. HOWLAND. That is all.

Mr. RALSTON. I ask that that be stricken out as impertinent to any matter before the committee.

Mr. HERSEY. Well, other evidence has been put in on the same point; Mr. Gompers testified about that.

Mr. RALSTON. He testified nothing, if you will pardon me, with reference to the McNamara reward.

Mr. HERSEY. No; but about the conviction of McNamara's.

Mr. RALSTON. Yes; that he thought the conviction was just.

Mr. GOODYKOONTZ. No; he said he thought the conviction was not just.

Mr. FOSTER. May I ask the Senator one question?

Senator JOHNSON. Yes, sir.

Mr. FOSTER. You were in Chicago in the summer of 1912, were you not?

Senator JOHNSON. Yes, sir.

Mr. FOSTER. Was Mr. Heney connected in any way with either convention held there, very actively?

Senator JOHNSON. I think he was one of our delegates to the Progressive convention; originally he was one of the delegates, I think, to the Republican convention; and subsequently to the Progressive convention.

Mr. FOSTER. I consulted the calendar last night covering about that time, and it seems that the pardon of Mr. Jones, who was convicted in Oregon in some land fraud case, occurred, I believe the same week as the unseating of some of the delegates from the Pacific coast and elsewhere—some of the Republican delegates in Chicago at the convention. And I wonder if you connect them in any way—or did you know of Jones at that time?

Senator JOHNSON. No; I would be of no aid as to that.

Mr. FOSTER. Mr. Heney was active in the so-called Roosevelt forces, at that time, was he not?

Senator JOHNSON. Yes; he was.

Mr. BIRD. Has anything occurred in connection with Mr. Burns up to the present time to cause you in any way to change your opinion or judgment of Mr. Burns?

Senator JOHNSON. No, sir; I hold the same opinion still.

Mr. JEFFERIS. When was the graft prosecution?

Senator JOHNSON. Six, seven, eight, and nine—parts of the year.

Mr. JEFFERIS. That is, 1906, 1907, 1908, and 1909?

Senator JOHNSON. Yes.



The CHAIRMAN. Are there any further questions?

Mr. HOWLAND. No; that is all, sir, so far as I am concerned.

Mr. Chairman, Mr. William J. Burns is present in the room, and while we do not want to make this a trial of Mr. Burns and do not feel that it is competent or relevant, at the same time, if the committee desires, we will offer Mr. Burns as a witness.

Mr. MICHENER. Mr. Chairman, I move that the defense pursue such course as to it may seem fit.

Mr. HOWLAND. No; with all due respect to you, our attitude is not one of defense, not yet.

Mr. FOSTER. If you know anything under this specification that Mr. Burns can testify about, I think it is competent.

Mr. CHANDLER. It may be that he wants to deny the whole thing—not that he himself is on trial, but in defense of the Attorney General he may deny the whole thing.

Mr. BOIES. Mr. Burns would be a competent witness.

Mr. GRAHAM. I should like to have his testimony on that Burns matter.

The CHAIRMAN. If that is the sense of the committee, we will hear Mr. Burns.

**TESTIMONY OF MR. WILLIAM J. BURNS, DIRECTOR BUREAU OF INVESTIGATION, DEPARTMENT OF JUSTICE, WASHINGTON, D. C.**

(The witness was duly sworn by the chairman.)

Mr. BURNS. May I say one word, Mr. Chairman? I want to say for myself personally that I will be glad on the witness stand here to lay myself open for any examination they may see, or anybody else may see, fit to ask me, and I am perfectly willing that they should go into every day of my life and my record.

Mr. HOWLAND. Give us your name, present occupation, and residence.

Mr. BURNS. William J. Burns; I am director of the Bureau of Investigation of the Department of Justice; and my present residence in Washington is the Wardman Park Hotel.

Mr. HOWLAND. When were you appointed to this position?

Mr. BURNS. On the 28th of August, 1921.

Mr. HOWLAND. Previous to this connection with the Government, what other service in the Government have you ever been employed in?

Mr. BURNS. I was an operative of the Secret Service of the Treasury Department for 14 or 15 years?

Mr. HOWLAND. When were you first connected with the United States Government in any capacity?

Mr. BURNS. I think in 1889 or 1890.

Mr. HOWLAND. In what administration?

Mr. BURNS. Harrison.

Mr. HOWLAND. In what capacity?

Mr. BURNS. As an operative of the Secret Service Division of the Treasury Department.

Mr. HOWLAND. How long were you connected with the Government at that time?

Mr. BURNS. Until 1903.

Mr. HOWLAND. Then what

Mr. BURNS. Then the Treasury Department turned me over to the Department of the Interior, where I organized the secret service for the purpose of making the land-fraud investigations in California and Oregon.

Mr. HOWLAND. Under whose administration was that?

Mr. BURNS. That was under President Roosevelt.

Mr. HOWLAND. You went in under Harrison, stayed in under Cleveland, under McKinley, and under Roosevelt?

Mr. BURNS. Yes.

Mr. HOWLAND. Did you, in the performance of your duty in organizing the department for the land-fraud investigation, have to go out to Portland and Oregon?

Mr. BURNS. Yes.

Mr. HOWLAND. During all of the time up to the time you went out to investigate the land-fraud cases in Oregon were any charges of any kind or character ever preferred against you in your official capacity as a servant of the Government?

Mr. BURNS. Never.

Mr. HOWLAND. When you went to Oregon who was associated with you in the prosecution of the land-fraud cases?

Mr. BURNS. Mr. Francis J. Heney, who was at first appointed an assistant to the Attorney General to prosecute the land frauds, and who then convicted the United States district attorney who was then in office and was afterwards appointed United States district attorney himself.

Mr. HOWLAND. Can you recall his name?

Mr. BURNS. John H. Hall.

Mr. JEFFERIS. When was this?

Mr. BURNS. 1905.

Mr. HOWLAND. When was this, Mr. Burns?

Mr. BURNS. 1905.

Mr. HOWLAND. How many of those cases were you identified with—those land-fraud cases, so-called?

Mr. BURNS. About in the neighborhood of 60.

Mr. HOWLAND. And who was associated with you in connection with the prosecution of those cases during all of that time, if you can recall, as district attorney or special district attorney of the United States?

Mr. BURNS. Francis J. Heney.

Mr. HOWLAND. You say there were some 60 of those cases. Do you recall some of the defendants in various cases that were convicted?

Mr. BURNS. Yes.

Mr. HOWLAND. Who were they?

Mr. BURNS. United States Senator Mitchell, Congressman Williamson—I think he had three trials, and there was a disagreement; Pierce Mays, a lawyer out there; Willard N. Jones; a man by the name of Bullard, and I think there were two or three State senators and several members of the legislature; Judge Tanner—I do not recollect the names any more.

Mr. HOWLAND. Who was Herman Binger?

Mr. BURNS. You mean Binger Herman?

Mr. HOWLAND. He was acquitted, was he not?

Mr. BURNS. No; the vote stood 11 to 1 for conviction.

Mr. HOWLAND. That is a disagreement?

Mr. BURNS. A disagreement; yes.

Mr. FOSTER. Who was this you mentioned a moment ago?

Mr. BURNS. Binger Herman, Commissioner of the General Land Office.

Mr. HOWLAND. During these investigations who was your superior officer; who were you working under?

Mr. BURNS. Mr. Heney.

Mr. HOWLAND. Coming, now, to the Jones case, I want you to state to this committee, Mr. Burns, whether you investigated names of jurors before they were put in the jury box or the jury wheel by the jury commissioners?

Mr. BURNS. No.

Mr. HOWLAND. Who furnished you the list for your investigation?

Mr. BURNS. Well, now, if you will permit me to explain how the thing was done, then the committee can better understand the situation.

Mr. HOWLAND. That is what I want you to do.

Mr. BURNS. I was in general charge of the investigations up there and every man who was appointed to assist me was on what they called my pay roll, with the exception of James B. Neuhausen, who was a special agent of the General Land Office, and Harris Tillard Jones, who was also a special agent of the General Land Office. The jury list that has been spoken of here I knew nothing about—not a thing.

Mr. Henry went away to San Francisco after court adjourned, after one of these cases was tried, and I went away—that is, I went off into the State of Washington, I think, prosecuting some other investigations, I think in connection with possibly some of the land frauds.

When I returned to Portland, Oreg., I found Mr. Thomas B. Neuhausen in charge of the investigation of the jurors. We had been making investigations of the jurors from the time we first went up there, in what they designate here as the “old jury box.”

When I returned, as I say, Mr. Neuhausen had the list of the jurors that he had been making out, made out by counties, so that they could give them to the various agents up there, and I think there was about four or five men doing that work—four or five agents.

They would only occasionally come to me, and Mr. Rittenhouse, who is in the room here, was my secretary when I first started out, and my stenographer. He afterwards became Mr. Heney's secretary. He had charge of all the papers and handled all of the papers that were handled in connection with all of these transactions. I never heard of any kick or complaint about the jury investigation until five years after it was all over, and then I heard from Mr. Heney. I met him casually one day, and he told me that Willard N. Jones and a number of those defendants in Portland had gone through all the courts and, failing to get relief, they were then seeking a pardon, and in order to get it that they had filed a lot of perjured affidavits and charged me with almost every conceivable crime in connection with the matter, and, among other things, that I had tampered with the jury box, with the aid of Mr.

Marsh, who was the deputy clerk of the United States court, and is now the present clerk of the court, having taken the place of Captain Slayden, who is now deceased.

I was amazed when he told me, and asked him what he was going to do about it. He stated that he had made a reply that would absolutely put them out of business; that there would be nothing further to it.

I heard no more about it until some time later, and I think it was again from Mr. Heney, and that he told me they were still persisting in an effort to secure a pardon for these men. At that time I think he mentioned several men.

Then I got a communication from—I think the first communication I got directly myself was while I was investigating the McNamara case, and just after we had arrested them—Mr. Finch, the present pardon attorney, came to me in New York at my hotel, just as I was packing and getting ready to leave on an important mission; and he had one of these brief bags in his hand. He told me who he was, and that he was there for the purpose of investigating the Willard N. Jones matter, and I expressed great surprise to him, wanting to know why they were traveling all the way to New York to see me about Willard N. Jones wanting a pardon, and I asked him if he went to that much trouble with everybody who applied for a pardon. "No"; but he told me he had been sent. I then went on to tell him—I said there never was anything wrong that we did.

When I left Portland, Oreg., I left every paper I had used in the entire case in a box in the district attorney's office, who subsequently notified Mr. Heney that it was there. Mr. Heney notified me, and I told him I had no use for it, that it might remain there; and it was from that box that they dug up these papers. I told Mr. Finch that all of these things they told me about that they based their applications for a pardon on were a tissue of falsehoods from beginning to end, and asked him why he did not go out there and look into it, send for the court records, and investigate the examination of Mr. Heney of the jurors on their voir dire to determine whether or not the box was filled with men who were prejudiced and who were "convictors"; that that would show at once. He told me that he had in his bag the papers in the matter, if I cared to see them. I told him "No"; I did not care to see them, but that I would be glad at any time to go to Washington and answer any questions and make any statements that were necessary so far as I knew anything about the matter.

The next time I saw Mr. Finch I called at the Department of Justice. I received a telegram while attending the American Bankers' Association in New Orleans asking me where I got a list of jurors previous to their being placed in the box at Portland, Oreg., and I wired back and stated that I never had a list and never got a list of jurors before they were placed in the box; and added—the telegram is there [indicating], by the way—"I will be very glad to go back and face any person who claims there was anything wrong with that trial," and so on.

I then came to Washington and inquired for the Attorney General, and they told me that he was out. I called four different times at the Department of Justice, seeking to see Mr. Wickersham, and each

time was told that he was not in and could not be seen. I then called Mr. Charles W. Cobb, the Assistant United States Attorney General of the Interior Department; told Mr. Cobb that I had made fruitless efforts to see Mr. Wickersham; that I could not see him, and asked him to go over with me and see if he could arrange so that I could see him and tell him about these applications for pardon.

He went with me, and he found out from a friend of his there that Mr. Wickersham was on that day away, and possibly that is the time that Mr. Wickersham refers to. There is an affidavit from Mr. Cobb setting forth exactly what I am stating. I do not know whether it was on that occasion or a previous occasion that I asked for Mr. Finch, and he came downstairs to see me. I said, "I am here now to talk to you about the Willard N. Jones case, and if there is anything that you want to ask me, do so." "Well," he said, "I have not anything to ask you." "Well," I said, "you stated—there have been some statements about you having my handwriting and something incriminating in the handwriting. If you have my handwriting show it to me and I will be very glad, indeed, to explain everything and anything you have there."

He then brought me down a piece of paper, and I said to him, "Is that what you thought was my handwriting?" And he said, "Yes." "Well," I said, "it is not my handwriting at all; it is Mr. Rittenhouse's or Mr. Griffith's, another of the stenographers." "Well," he said, "I thought it was yours." I said, "Is there anything else that you want to ask me?" "No," he said, "I think that is all."

I supposed that each time I saw Mr. Finch and when I talked to him that I was then making a report, and that I was then explaining to him anything and everything that I knew about the matter, and I never heard anything more about it until after the pardon was granted; and as soon as I heard of it, I took the first train and came to Washington. I went to see Mr. Walter Fisher, who was then Secretary of the Interior, and I told Mr. Fisher that the President had been deceived in this matter, and that this man Jones had paid for his pardon, and that I wanted him to see the President and give me a chance to be heard in the matter. Mr. Fisher immediately went to see the President. And the President said to him, as he reported to me, "I know nothing about the matter. This matter was brought to my attention by Mr. Wickersham. They should go and see Mr. Wickersham, and find from him what the situation is. I know nothing about it."

Mr. Fisher then went to see Mr. Wickersham. Mr. Wickersham said, "I am very absorbed at this time, and I have not any time to reopen this case. We are going out pretty soon. You should take it up with our successors."

Mr. Fisher came back and reported that to me. There is an affidavit from him there, saying exactly what was said and done.

Mr. HOWLAND. You mean that is in Mr. Finch's file?

Mr. BURNS. Yes. I have been knocking at the door from that day until this to try and get a hearing in this matter and have never succeeded.

I went to his successor, as he suggested that I do, and I was turned down, and he would not reopen the case.

Finch out in Oregon tried to reopen the case, and he did not succeed, and the case never has been reopened.



Shortly after I arrested the McNamaras—immediately after—a resolution was introduced in Congress to investigate the land frauds in California and Oregon, and I was tickled to death, and I kept waiting for some action to be taken, and when nothing was done I came to Washington and I was told here that Mr. Gompers had asked that this investigation be made by Congress.

I had a man make an investigation, and he came back to me and told me that they found out they had nothing against me in the matter, and therefore they were not going to investigate it.

Mr. HOWLAND. Let me ask you, Mr. Burns, about a certain telegram which it is said that you sent with reference to this matter, on August 17, I think it is, 1905.

Mr. BURNS. May I look at the telegram?

Mr. HOWLAND. I do not know that I have it here. It is that photostatic copy we had this morning. At any rate, the copy set out in the specification is as follows—

Mr. BURNS (interposing). Yes; that is all I want.

Mr. HOWLAND (reading). "The jury commissioners cleaned out the old box from which five jurors were selected and put in 600 names, every one of which was investigated before they were placed in the box. This confidential." That is all that is pleaded here. I want to ask you about this telegram.

Mr. BURNS. I will tell you all about it. I left that telegram in the box I told you about in the district attorney's office when I left there. Secretary Hitchcock was very deeply interested in these cases.

Mr. HOWLAND. Just pardon me—well, go ahead; I beg your pardon.

Mr. BURNS. And he insisted on my letting him know from time to time what progress was being made and what was being done. I sent him a number of telegrams, and, much to my surprise, we found that they were coming out in the newspapers, and Mr. Heney got very angry about it; told me to quit sending any telegrams if they were going to be made public.

Thereafter I wrote them a letter and explained this to them, and in this telegram added "this confidential," so that the Secretary would not give it out at this end.

Now, in that I stated—and I want to explain that a great deal has been made of that—because a wrong construction has been put on it.

Mr. HOWLAND. That is what I wanted you to do. I want to ask you, Mr. Burns, if in this telegram, which reads: "Jury commissioners cleaned out old box from which five jurors were selected and put in 600 names, every one which was investigated before they were placed in the box," if you meant to say and did say there that these men were investigated by you.

Mr. BURNS. Oh, not at all. We only had six days from the time we learned they were going to be put in the box when they were put in the box—600 names—we were told by the jury commissioners; it was common knowledge there and I think published in the papers—that the jury were selected after being investigated by the jury commissioner and by the clerks of the court. Everybody knew that.

Mr. HOWLAND. I will ask you if that paragraph which I have just read, which is treated in this specification, is the entire telegram?

Mr. BURNS. No, it is not.

Mr. HOWLAND. It was in code, was it not?

Mr. BURNS. Yes.

Mr. HOWLAND. Can you still read your code?

Mr. BURNS. I do not know whether I could or not, but I can tell the telegram if I see it.

Mr. HOWLAND. There is a photograph of it, the original; you sent it, I suppose? [Handing paper to the witness.]

Mr. BURNS. This is the original telegram that I sent, and this is a translation of it. Shall I read what was left out?

Mr. HOWLAND. Yes, please.

Mr. BURNS. Read the whole telegram?

Mr. HOWLAND. The date of the telegram is August 17, 1905. It is pleaded correctly.

Mr. BURNS (reading). "Jury commissioners cleaned out the old box from which five jurors are selected and put in 600 new names, every one of which was investigated before they were placed in the box. This confidential. The grand jury was drawn to-day and is composed of splendid men and in whom we have the very greatest faith. Court will not meet until September 5. We will look for you about the 24th or 25th. Do not forget to attend to Columbus pension matter."

Mr. HOWLAND. Then the construction placed on that Mr. Burns, to the effect that you had advance notice of the names that were going into the box and investigated those men before they were put into the box, is wrong?

Mr. BURNS. Absolutely wrong. Why, there are letters there [indicating] to show that we continued to investigate the names after they were in the box and the box filled. We were investigating and I was investigating the names, of the old box right up almost until the day we learned there was to be a new box made.

Mr. HOWLAND. Who constituted the jury commission out there—the clerk of the court and some one appointed?

Mr. BURNS. The clerk of the court and Mr. Bush, the jury commissioner.

Mr. HOWLAND. They constituted the jury commissioner?

Mr. BURNS. Yes. Now, if you will permit me, I would like to explain that I think the only handwriting you will find that is mine in connection with this entire case.

Mr. HOWLAND. I am coming to that in just a minute.

Mr. BURNS. All right.

Mr. HOWLAND. About that handwriting——

Mr. BURNS (interposing). I have never been permitted to see these papers. Of course, I have never asked for them since I became connected with the Government myself. But any person who sought to prosecute them and ask for them could go and get this file and carry it away whenever they wanted to.

Mr. HOWLAND. I was interrupted. What was the last there?

Mr. BURNS. I say I have never been permitted to see the papers in this file, and I have never asked for them since I have been in the Government myself.

Mr. HOWLAND. You never knew that any irregularity was claimed in connection with this matter from the time of the conviction in 1905 down to some time in 1911?

Mr. BURNS. No; on the other hand, there were a great many efforts made to intimidate and coerce us and drive us out of Oregon, with all sorts of frame-ups being practiced. They even burned the barn and the crops of one of our witnesses, and then caught him and beat him almost to death. Mr. Heney, I think, indicted one or two men for interfering with the witnesses.

Mr. HOWLAND. During the time that you were there and the cases in which you were interested, on behalf of the Government, was there any complaint made with reference to any case except this Jones case because of irregularities?

Mr. BURNS. That is the only one I ever heard of at all until this matter came up, and then I think they claimed that everything was crooked out there. They pardoned John H. Hall, as I understood it, because he, too, was tried by this jury box. He was not, however, tried for three years after this jury box was cleared out of the way.

Mr. HOWLAND. We will not try the whole case.

Mr. BURNS. No——

Mr. HOWLAND (interposing). Mr. Finch went down to New York to see you about this Jones case and had a talk with you there?

Mr. BURNS. Yes.

Mr. HOWLAND. And some time after that did you receive a letter from Mr. Finch in which he referred to the fact that he had received a letter from Assistant Clerk Marsh, of the court there at Portland, Oreg.; did you not receive a letter from him to that effect?

Mr. BURNS. Yes.

Mr. HOWLAND. I wonder if you have the original letters still in your possession?

Mr. BURNS. No, I have not.

Mr. HOWLAND. Would you know a copy of that letter if you would see it?

Mr. BURNS. Yes, I would know a copy of it.

(Mr. Howland thereupon handed a paper to the witness.)

Mr. BURNS (after examining paper). I remember receiving this letter.

Mr. HOWLAND. This is a letter written by Mr. Finch, the pardon attorney of the department, who was here yesterday, to Mr. Burns after the New York conference, when Mr. Burns told Mr. Finch, or explained certain matters that Finch asked him about. This is a letter advising Mr. Burns that additional statements from the clerk of the court there, Mr. Marsh, had been received by him, and that they were in line with Mr. Burns's statement to Mr. Finch.

Now, I am reading from the official files, if you need further identification, of the pardon clerk of the Department of Justice.

Mr. RALSTON. You are reading all the letter?

Mr. HOWLAND. I am going to read all the letter. The copy retained is dated December 14, 1911 [reading]:

WILLIAM J. BURNS, Esq.,

*Herald Square Hotel, New York, N. Y.*

DEAR SIR: Shortly after you left my office yesterday afternoon my clerk brought to me a letter dated August 23, 1911, to the Attorney General, written by Mr. Heney, inclosing a letter to Mr. Heney dated June 26, 1911, written

by Mr. Marsh. At the time these letters were presented to me I had no knowledge whatever of their existence. They were received a few days prior to my going to Atlantic City last summer and in the rush of other things they must have escaped my notice. I am writing to you in order to be perfectly fair to Mr. Marsh. You will remember that in my conversation with you in New York I referred to certain statements purported to have been made by him, to Mr. McChord, at which you expressed some surprise.

Mr. Marsh states many material facts in his letter within his personal knowledge which have a direct bearing upon the situation, and which are in line with your views of the situation. I am sending to Mr. Heney to-day a copy of Mr. Marsh's letter, as requested in his letter to the Attorney General.

Very respectfully,

*Pardon Attorney.*

Mr. RALSTON. What was the date?

Mr. HOWLAND. December 14, 1911. After receiving that letter from the pardon clerk, Mr. Burns, what more did you do in regard to presenting statements and information to Mr. Finch?

Mr. BURNS. I wrote him a letter.

Mr. HOWLAND. You wrote him a letter?

Mr. BURNS. Yes; I answered that letter.

Mr. HOWLAND. Well, did you consider the incident closed or otherwise?

Mr. BURNS. Certainly. As I say, from the start, I proposed my explanation to Mr. Finch when I met him in New York was all that I was going to be called upon to do, unless, as I said in a telegram which you will find in there, I asked him in one of my letters to make a serious investigation. I meant by that for him to go out to Portland, Oreg.

Mr. HOWLAND. I understand; that is in this [indicating].

Mr. BURNS. Yes.

Mr. HOWLAND. Mr. Burns, what kind of an investigation and what was the purpose of your investigation of jury men at the time you were working on the land-fraud cases; what was the land-fraud cases—what were your instructions to your investigators working under you?

Mr. BURNS. You will find my letters in the file there [indicating] in which I state to go out and ascertain their standing in the community as men and as citizens to determine whether or not they will give a fair and impartial trial to the defendants, whether or not they will be fair with the Government.

Mr. HOWLAND. What was the instruction to them about talking to the prospective juror himself?

Mr. BURNS. Oh, of course, they were notified and instructed not to go near the juror himself.

Mr. HOWLAND. And these men who went out there to investigate returned and made their reports to you?

Mr. BURNS. Mr. Heney instructed me time and again, and we had a great deal of difficulty about it. These men would come in and give their opinion from what they had learned from residents in the community where the juror lived. Mr. Heney said he did not want that; he wanted them to write down what the persons they were interrogating would say about the prospective juror, and that is the way I came to write the only article of my handwriting that they have in this case, where they sought to give the impres-

sion that it was me that said "Would convict," "Would convict Christ," and "Sons of so and so."

The one particular report in my handwriting which you will find there was a report from a man by the name of Brownell, who was a State senator and who confessed to his participation in the land frauds, and was giving us information, and I asked him concerning the list of jurors from Clackamas County, where he lived, and I asked him about these men. He would tell me, for instance, he said, "He is a convictor from the word go."

He meant by that that he was an honest man; not that he was fixed to convict any person. Then I would give another way—"would convict Christ."

Mr. HOWLAND. That is what he said?

Mr. BURNS. Yes; that is what he said. I wrote all that down and then passed it over to Mr. Heney.

Mr. GRAHAM. I understand that those expressions were not of your origination?

Mr. BURNS. Not at all, Mr. Graham; not at all. They were entirely the answers complying with Mr. Heney's instructions to write down what the juror would say or whoever we were interrogating.

Mr. HOWLAND. I hand you a slip of paper here that is marked "Pardon attorney's office, January 27, 1912, Department of Justice," and ask you what it is. You can recognize it [handing paper to the witness].

Mr. BURNS. This is one of the reports from the jurors. That is not my handwriting; and after this there is, "S. B., S. B., good man, will convict, bad egg, O. K.," and so on.

Mr. JEFFERIS. You say that is not your handwriting?

Mr. BURNS. That is not my handwriting.

Mr. CHANDLER. Is any of that in your handwriting—"Would convict Christ"? Did you write any of that?

Mr. BURNS. I wrote all of it.

Mr. CHANDLER. But you say that is not in your handwriting?

Mr. BURNS. This is not the report. This is not the one.

Mr. HOWLAND. Coming to that one now—we will look to see if we have got it.

Mr. BURNS. You have got it there. I saw the photostat copy of it.

Mr. HOWLAND. Coming now to these rather profane words that appeared opposite the name of certain men on this list, for instance—I will read it all. Perhaps you will be able to remember whose language it is:

"Convictor from the word go. Think he is a Populist; if so, convictor. Good reliable man. Hidebound Democrat. Not bound to see any good in Republicans. Would convict Christ. Convict anyone. Democrat."

Is that your language?

Mr. BURNS. No; that is Brownell's language.

Mr. HOWLAND. Who is Brownell?

Mr. BURNS. He was State senator out there at the time that was participating in those land frauds and had confessed.

Mr. HOWLAND. Did he go out and look up some of these men for you?



Mr. BURNS. Oh, no; we sent for him to come in to the office, and that is the way that it happened to be in my handwriting.

Mr. HOWLAND. You asked him about these men?

Mr. BURNS. Yes; I asked him about the men from Clackamas County.

Mr. HOWLAND. The Clackamas County list?

Mr. BURNS. Yes.

Mr. BIRD. Mr. Burns, you were at that time under instructions to report what they said verbatim?

Mr. BURNS. Yes.

Mr. YATES. I don't understand just exactly what particular paper it is that these particular things appear on.

Mr. HOWLAND. It is a list of jurymen we had for investigation.

Mr. YATES. Of a certain county?

Mr. HOWLAND. Yes; Clackamas County.

Mr. FOSTER. The county that this Senator lives in?

Mr. BURNS. Yes.

Mr. HOWLAND. Yes.

Mr. BIRD. Does that document show that it was a report from an interrogation of this particular Senator Brownell, or whatever his name is?

Mr. BURNS. The one I wrote does.

Mr. HOWLAND. We are looking for that.

Mr. CHANDLER. These were annotations from one county. Have you annotations from all the counties in which these people were selected, or were they just selected from one county?

Mr. BURNS. No; they were selected from a great number of counties. They were selected from this side of what they call the "range." Oregon is divided, as you know, by a mountain range.

Mr. CHANDLER. Are any of these epithets and annotations with reference to proposed jurors from other counties?

Mr. BURNS. I don't know, of course, just where these jurors were, but I have a copy of that—my handwriting. Have you got a copy of it, my handwriting of the Brownell list?

A VOICE. No.

Mr. GOODYKOONTZ. These annotations apply to men whose names never went into the box? In other words, they were not part of the 600, were they, or were they not?

Mr. BURNS. Well, of course, I don't know. I would not know unless by making a comparison. You see we were investigating the jurors that were in the box from the time we reached Oregon right up until the time they put new names into the box, but I didn't know, for I guess until the day they put them in, or the day before—two or three days before, maybe—the records here will show that the judge did not decide, I think, to put them in until, I think, six days before they were put in.

Mr. YATES. I would like to ask a question, if it will not disturb you. My recollection is that in my State—Illinois—the clerk of the United States court writes a letter to the county judges asking them to suggest suitable men or fit men for the Federal jury, and in that way what I understand your 600 ordinarily would be made up. Is that the method out there?

Mr. BURNS. That is the method out there, except he gets the names in any way he can. The jury commissioner and the clerk of court then after they do get the names, what they did out there they sent them back then to the various county clerks, asking if they knew about them.

Mr. YATES. Who sent them back?

Mr. BURNS. The jury commissioner and the clerk of the court. So that they did make the investigation mentioned in my telegram before the names went into the box.

Mr. YATES. What I wanted to know was how the 600 were made up?

Mr. BURNS. Just the way you have outlined.

Mr. GOODYKOONTZ. You can not say whether the annotations applied to the old list or to the new one?

Mr. BURNS. No; not without making a comparison of the names that were put into the next box and the names that were in the box.

Mr. CHANDLER. You don't know how many names were annotated on the whole list?

Mr. BURNS. How many names were put into the box?

Mr. CHANDLER. No; annotated. Did you see the complete list?

Mr. BURNS. No; I never saw the complete list that they talk about but I understand there were 2,600 names on the original list; from that 2,600 they took 700 names and put the 700 names into the box.

Mr. MICHENER. As I get it, Mr. Burns, the parts of these notations in your handwriting are not your conclusions?

Mr. BURNS. Oh, no.

Mr. MICHENER. But are the statements made to you by the other man?

Mr. BURNS. That is it exactly.

Mr. MICHENER. Well, is it not your custom when acting as a detective investigating jurors, to report your conclusions as to what you find and feel as to the character of the man? Don't you usually do that?

Mr. BURNS. Yes; we had been doing that, but the trouble with some of these men, their conclusions were very bad. For instance we found that some of the men reported would not give the Government a fair chance. One of the jurors said on a trial after he came out and the case was over that he would not convict a Congressman regardless of what the testimony was. [Laughter.]

Mr. CHANDLER. Sensible man.

Mr. FOSTER. That was years ago. [Laughter.]

Mr. BURNS. Years ago; yes.

Mr. YATES. Did you say Congressman?

Mr. BURNS. Yes.

Mr. MICHENER. Does this sheet on which these notations are made contain the name of the man who made those statements, the name of whom you had interrogated?

Mr. BURNS. Well, I don't know whether I put his name on it or not—Brownell's name on it or not.

Mr. MICHENER. Then if you take the paper as it appears on its face, there are simply men's names written in your handwriting.

with your conclusions. That is what the paper means when standing alone, is it not?

Mr. BURNS. Yes.

Mr. MICHENER. And without an explanation from you there could be but one inference drawn, and that would be the inference that you made the investigation and that you made your report in your own handwriting, and therein included your conclusions?

Mr. BURNS. Yes.

Mr. MICHENER. That would be the fair thing to think.

Mr. BURNS. Yes; they could be done that way.

Mr. MICHENER. You think that that would be the usual way of doing.

Mr. BURNS. And I don't think I put Brownell's name on the paper. If they can only find it—and I hope they do—I want you to see it.

Mr. MICHENER. Now, then, if they had nothing else before them—the Attorney General's department—but that paper, without an explanation from you, they could arrive at but one conclusion?

Mr. BURNS. Yes; they could reach—possibly they would say at once that that was what I was saying about them, if it was in my handwriting.

Mr. MICHENER. And without your explanation we could arrive at no other conclusion, could we?

Mr. BURNS. No.

Mr. MICHENER. That is all.

Mr. CHANDLER. Brownell reported only from one county. Did you have anybody assisting you from any other county with reference to qualifications of proposed jurors?

Mr. BURNS. Oh; these men went to all the business men in Portland.

Mr. CHANDLER. You have said you sent for Brownell to come in?

Mr. BURNS. I sent for him to come into our office.

Mr. CHANDLER. Did you send for anybody else from any other county to come in?

Mr. BURNS. No; people very often drop in, and they would read in the papers that the State of Oregon was divided there with the prosecution—for and against the prosecution.

Mr. CHANDLER. And these notations here are simply from Brownell and from nobody else?

Mr. BURNS. From Brownell; nobody else.

Mr. FOSTER. That is, the notations are just from Brownell's county?

Mr. BURNS. Yes, sir.

Mr. FOSTER. The one on which the notations were made by you personally?

Mr. BURNS. That is it.

Mr. FOSTER. You had other counties and other notations by other men?

Mr. BURNS. Yes.

Mr. YATES. How many counties are there in that district?

Mr. BURNS. I think there were about—my recollection is—and I don't know exactly, but I think there were jurors drawn possibly from six or seven counties.

Mr. HOWLAND. Now, Mr. Burns, I am going to try again and ask you if that is the Clackamas County list; if that is your handwriting [showing a paper to the witness]?

Mr. BURNS. Of course I wouldn't know whether this is my handwriting. You will have to read it. I can't.

Mr. CHANDLER. Read that answer.

(The reporter read the answer, as follows:)

Mr. BURNS. Of course I wouldn't know whether this is my handwriting. You will have to read it. I can't.

Mr. BURNS. No; I wouldn't know whether this is Brownell's, is the proper answer; but this is my writing.

Well, for instance, "L. H. Andrews. Andrews doubtful. Religiously inclined. Not in politics."

Then, George Armstrong, from a place called Conemaugh, "Not good juror."

Mr. MICHENER. What does the word "doubtful" there mean?

Mr. BURNS. They didn't know enough about him to say whether or not he would make a good juror.

Mr. BIRD. Whose judgment is that?

Mr. BURNS. This is Brownell's judgment.

Mr. BIRD. And reported by you verbatim?

Mr. BURNS. That is it exactly.

Mr. BIRD. Under instructions?

Mr. BURNS. Yes. Now, Mr. Chandler asked me a while ago if I ever sent for anybody else. I may have sent for somebody else—that is, somebody else may have come in there to see me and would give me information, and I would either dictate it to a stenographer or mark it down, but the reason that I wrote this particular matter myself was that this man did not want anybody to know that he was giving us information, and that is why I wrote it.

Mr. CHANDLER. At least, the annotations were Brownell's observations which you wrote down?

Mr. BURNS. That is it exactly.

Now, here is one:

Nicholas Barth. Strong Socialist and Populist. Anti-Mitchell. Good reputation. Had contract for carrying mail. Voted for Brownell.

Now, I know this is Brownell's:

Voted for Brownell because the Oregonian was trying to beat him.

Then, written in parentheses by me is: "This may apply to the son."

T. W. Booth, Socialist and Populist. Would be for conviction. John Bush. Don't know him. William Ballard. Strong Socialist. Good juror. Republican. This is Clark, Republican. Anti-Mitchell.

Mr. MICHENER. Right there, did you say after one man, "Don't know him"?

Mr. BURNS. That meant that Brownell didn't know him.

Mr. CHANDLER. As a matter of fact, Mr. Burns, you did not know and had never even seen one of these men?

Mr. BURNS. I never saw any of these men.

Mr. CHANDLER. And you could not of your own knowledge have made any observation about them at all?

Mr. BURNS. No; because I never knew any of them.

Mr. MICHENER. I called his attention to that because I had some doubts about some of the things there, but that will not permit of a doubt where the man says that he don't know him.

Mr. BURNS. I don't know him. [Reading:]

C. F. Clark. He went to Willamette University with Williamson.

Williamson was one of the men on trial.

Latter tried to fix him for Brownell. Not a good juror in the Williamson case. Good in all others.

S. D. Coleman. Don't know him. N. G.

J. W. Doty. Convictor from the word go. Socialist. From Silver. Anti-Mitchell. B. talked with him to-day. He is for conviction.

Meaning Brownell had talked with him that day.

Mr. CHANDLER. Is B. in the annotation?

Mr. BURNS. Yes. Here is one:

Charles Daugherty. Strong Democrat. Connections originally anti-Mitchell. Very forceful and thinks the Government has been gutted by land frauds. Steve Hungate is a friend of his. Meldrim is a friend of Hungate's.

Mr. GRAHAM. I don't think it is necessary to read them all.

Mr. HOWLAND. If you desire to have the whole list, we will submit it to them.

Mr. BURNS. This is the list, though, where they say "S. B.'s" and "Would convict Christ."

Mr. GRAHAM. Well, you need not read all the names. The fact is, as you have stated, that every one of these annotations is the result of your interview with Brownell?

Mr. BURNS. Yes, sir.

Mr. GRAHAM. And is it his opinions and expressions that you put down?

Mr. BURNS. Yes, sir.

Mr. GOODYKOONTZ. Mr. Burns, have you ever known of a case where the prosecuting officer did not take the precaution to find out in advance something about the jurors?

Mr. BURNS. In all the years that I was with the Secret Service they always did that in every important case.

Mr. CHANDLER. The attorneys for the defendant always do the same thing, if they do their duty?

Mr. FOSTER. Did you ever know an attorney for the defendant that didn't do the same thing?

Mr. CHANDLER. That is what I was observing. That is exactly it.

Mr. BURNS. Now, I would like to make this statement, too, while I think of it. From the time these charges—from the time this man was pardoned—these men were pardoned—every time I took the witness stand anywhere all over the country, which was a great many times, they would always, on cross-examination, ask me if it was not a fact that President Taft pardoned a man because of the improper way that I had convicted him? My answer was always, "No; it is not true." Then they would read this record, and then I would explain that that was a tissue of falsehoods from beginning to end and was gotten up solely for the purpose of getting those men a pardon that Jones paid for, and that I called attention to the fact that I was then under oath and they could prosecute me for perjury, but no prosecutions were ever brought or ever attempted.



Mr. HOWLAND. Mr. Burns, after the graft prosecutions in the State of Oregon were over and you were released from that duty, what did you go to then?

Mr. BURNS. I then took up the graft investigation at San Francisco.

Mr. HOWLAND. And how long were you engaged in the prosecution of that matter?

Mr. BURNS. Three years.

Mr. HOWLAND. Were you in the employ of the Government at that time?

Mr. BURNS. No.

Mr. HOWLAND. On your own responsibility.

Mr. BURNS. Yes; I resigned from the Government.

Mr. HOWLAND. How long were you there, did you say?

Mr. BURNS. Three years.

Mr. HOWLAND. After the graft prosecutions in San Francisco, then what did you take up next?

Mr. BURNS. I then organized the William J. Burns International Detective Agency and went into business for myself, where I remained until I came with the Government when I left that organization.

Mr. HOWLAND. During the time of the existence of your W. J. Burns organization, what matters were you engaged upon? Who were your clients? Give us some of your clients.

Mr. BURNS. Well, the first really—the way I came to open my agency was the American Bankers' Association sent for me and told me that they understood that when I got through with the graft investigation I was going to open a private agency, and if so, they wanted to know whether or not I would entertain a proposition of taking over their work.

Mr. HOWLAND. Did you?

Mr. BURNS. It was then being done by the Pinkertons. I told them yes, I would, and they gave me a contract when I only had one or two offices open, and I have had it ever since until I left the Burns Agency, and they still have it.

Mr. HOWLAND. How long have you been acquainted with the Attorney General?

Mr. BURNS. Why, I have known the Attorney General for 40 years.

Mr. HOWLAND. You don't want to plead guilty to being an Ohio man, do you? Where were you born?

Mr. BURNS. I was born in Baltimore.

Mr. HOWLAND. Where did you first become acquainted with the Attorney General?

Mr. BURNS. At Columbus, Ohio.

Mr. HOWLAND. And when was that, 40 years ago?

Mr. BURNS. Forty years ago.

Mr. HOWLAND. How well did you know—how intimately have you known him down through the years?

Mr. BURNS. I knew him out there when he was in the legislature. It seemed to me he was in the legislature when he was about 15 years old. Everybody knew him.

Mr. HOWLAND. How well did you know him?

Mr. BURNS. I knew him very well.

Mr. HOWLAND. And from that time on down to the present day, how well have you known the Attorney General?

Mr. BURNS. Well, he lived at Columbus, Ohio, and continued to lived there until he was appointed in the Cabinet, and whenever I went to Columbus, where all of my folks live—my sisters and brothers—whenever I visited there I never failed to call on him.

Mr. HOWLAND. At the time you were about to undertake the land-fraud cases, the land-graft cases, they call them, in the State of Oregon, did you have a conference with Mr. Daugherty?

Mr. BURNS. Yes.

Mr. HOWLAND. State what that was.

Mr. BURNS. I went to Mr. Daugherty and wanted to know if he would not accept a position with the Government and prosecute the land frauds, and if I recollect right he told me that his engagements were such that he could not get away. I spoke also to the Secretary of the Interior about it.

Mr. HOWLAND. Have you any personal acquaintance with Mr.—a gentleman by the name of Macauley, living in Toronto, Canada?

Mr. BURNS. I never saw him in my life.

Mr. HOWLAND. Tell us how you got in touch with him.

Mr. BURNS. I will be very glad to tell you about the case. The Burns Agency, in looking after the banks and protecting them, learned that some person had purchased four drafts of the Canadian Express Co. But two of those drafts were ever cashed; the other two were used as pattern pieces and counterfeited; and every holiday, along at the holidays a week or so or two weeks before and a week after they would find these drafts showing up around at different places. The Burns Agency issued a circular and circularized the whole country, sending them not only to the banks but to the big dry-goods stores and retail stores, asking them to be on the lookout for any person attempting to pass a Canadian Express check.

In St. Louis, in the large dry goods store there—department store of Barr—a man entered there one day and made some purchases and tendered one of these \$200 checks on the Canadian Express Co. When the young lady carried it back—the clerk carried it to the man whose duty it was to O. K. anything of that sort before they could cash it, he looked at it and said: "I have a recollection that the Burns Agency sent a circular here concerning this, and I will look it up."

He did look it up and found that it was the identical check that was described in the circular, and he then telephoned to the Burns Agency and tried to detain the man until the Burns representative got there, but the man who was passing the check felt satisfied that they were making some sort of an investigation, and he immediately kicked up a fuss, demanded to know where his check was and what they were doing with it; that he would not take the goods then, and demanded it back, and they gave it back to him, and he got away before the Burns man got there; but the Burns man located a man answering his description at a hotel, and he then got the people from the Barr store, took them up, and sat in the offices of the hotel with them, and told them: "Now, if you see this man, point him out." And they pointed out this man Macauley. Then they sent for

two or three other people that had taken these checks. They came up and in the same way identified this man. In the meantime they notified the police, and the chief of detectives, Mr. Hannigan, came up there, found the Burns man in the hotel, and asked him where this man was, and he pointed him out. The Burns man said to him: "Now, don't arrest him yet, because we may catch him passing one of these checks." But he stated that he had all the evidence that he needed; that he had been thoroughly identified; and he arrested him, placed him under arrest, together with his boy. This man was locked up, this Macauley, and was kept in jail for three or four days, trying frantically to get out on bond, claiming that he had some important business to attend to. Finally he did get out. When he did he went to three or four detective agencies asking them to find some old-time criminal that looked like him. He went to two that I know of. Then he went to the Pinkertons, and they succeeded in finding the fellow for him, a man called "Christmas Kehoe," who, of course, was not Macauley. They called him "Christmas Kehoe."

In the meantime they discovered—the Burns Agency, of course, notified every person interested all over the country that this man had been arrested in St. Louis. A number of New York merchants, some jewelers and others, insisted that he be brought back to New York. The facts were placed before the district attorney and Macauley was indicted. The St. Louis authorities released him and he was taken to New York. In the meantime he got hold of a lawyer and the lawyer and the district attorney's office made an investigation. The investigation at the district attorney's office was made by a man who was subsequently convicted and dismissed himself, and they discovered an alibi for this man that was very peculiar. The people at St. Louis, at the hotel where he was, testified positively that on the day that these checks were passed in New York this man was in St. Louis.

Mr. HOWLAND. Vice versa, wasn't it?

Mr. BURNS. And vice versa. That when he was charged in St. Louis he was recognized in New York or Toronto or some place. But everybody identified him as the man that passed the checks. He then sued one of these jewelers in New York for \$100,000 and got a verdict..

Mr. HOWLAND. He was acquitted on the charge?

Mr. BURNS. No; he was never tried. The indictment was dismissed. He got a verdict. In the meantime it went up to the higher court and they threw it out, reversed it. Then he went out to St. Louis and brought suits. He sued everybody connected that he knew, I guess, except the Burns Agency or myself, yet he was charging the Burns Agency with all his troubles. Back at St. Louis when they came to the trial there everybody walked up, the witnesses, and identified him as the man that passed the checks, identified him positively. He lost the case there and lost his case in New York.

Then, as I found afterwards, when I would get on the witness stand to testify, like the Wickersham letter, they would bring Macauley—"Didn't you improperly identify him?"

Now, that is all I had to do with it. I knew nothing about it; never saw the man in my life.

Mr. HOWLAND. That is, this gentleman that writes in from Toronto? Are you sure about that?

Mr. BURNS. That is the man that writes in from Toronto. I think myself he is the man that passed the checks (laughter).

Mr. HOWLAND. I think, at present, so far as I am informed, you may take the witness. Oh, yes, there is one matter—it is in the Wickersham report, too—in regard to a man by the name of Sorenson, whom it is alleged was in your employ and you had him indicted as a codefendant in order that he might learn the secrets of the opposition and assist you in the prosecution. What is the truth about this man Sorenson?

Mr. BURNS. I had left the land frauds before Sorenson was tried with Jones; was 3,000 miles away when the trial took place and didn't know anything about it.

Mr. HOWLAND. I call your honor's attention to the fact that this is in the Wickersham report.

Mr. GRAHAM. Yes, it is in the charges, too.

Mr. HOWLAND. I think now that you may take the witness. Well, inasmuch as—how long have you known Mr. Samuel Gompers?

Mr. BURNS. When I was in the Secret Service of the Treasury Department here I met him. I heard him testify that he didn't know me to-day. I met him then, talked with him a number of times.

Mr. HOWLAND. And how intimately have you known him during these years? How long ago was it that you met him?

Mr. BURNS. We were never very intimate.

Mr. HOWLAND. You knew him by reputation?

Mr. BURNS. By reputation, yes. He seemed to know me, as he thought, better than I knew him.

Mr. HOWLAND. Well, what were your relations in the McNamara matter?

Mr. BURNS. When I arrested J. J. McNamara at Indianapolis, the newspaper men came to me and wanted a story, and I told them that this man was charged with murder; that I was not going to say anything about it because I didn't think it was fair. They were very persistent in wanting to know all about it. They came back to me in about an hour and showed me an Associated Press telegram stating that Mr. Samuel Gompers, when shown the telegram that McNamara had been arrested, immediately declared that it was a "frame-up" on the part of Burns; that Burns framed it and planted the dynamite and found it where he planted it. Then I said: "Yes, I will talk about it now," and I did. I showed them that if I framed it, then McNamara had to help me, because the men that they purchased the nitroglycerin from identified them; the man they purchased the locks from identified them in a number of places.

Mr. HOWLAND. Since that time, what have been your relations with Mr. Gompers, if any, friendly or otherwise?

Mr. BURNS. Very unfriendly. Mr. Gompers has at every opportunity that he has had since the McNamara arrest hounded me.

Mr. JEFFERIS. They afterwards pleaded guilty, did they not?

Mr. BURNS. Yes, they afterwards pleaded guilty and confessed, and just before they did I was attending a convention of the Ameri-

can Bankers' Association at New Orleans. Mr. Gompers, I understand, learned that they were about to confess and sent a man—the American Federation of Labor was meeting in Atlanta, Ga.—he sent a man out to Los Angeles to stop them, but he didn't get there in time.

Mr. YATES. You mean to stop the confession?

Mr. BURNS. To stop the confession; yes.

Mr. RALSTON. Mr. Chairman, there is just one thing that I want to call the committee's attention to. A great number of statements have been made by Mr. Burns relative to Mr. Macauley. The information which I have in my possession directly contradicts Mr. Burns's statements in half a dozen or a dozen different respects. I think that Mr. Macauley, having been attacked as he has by innuendo and indirectly, should have an opportunity of appearing before this committee in his own behalf. I submit that to the committee in fairness he should be allowed to appear.

Mr. HOWLAND. Just a word about that. Mr. Macauley is interpleaded here by name in these specifications, and his letter is on file here, offered by Mr. Ralston as a part of his case. We did not bring this in here.

Mr. RALSTON. Mr. Burns has accused him of a serious crime.

Mr. GRAHAM. Oh, no, he has not.

Mr. RALSTON. He has accused him practically of uttering a forgery.

Mr. GRAHAM. But I will suggest, Mr. Chairman, one thing, that if Mr. Ralston has Mr. Joyce within reach, I think it would be only fair, since Mr. Burns has taken the stand, that Mr. Joyce should be heard. I objected because I thought Mr. Burns was not going to be heard, and therefore it was planting something against him that he had no opportunity to respond to; now that he has come here and talked I withdraw my objection and I think Mr. Joyce ought to be heard.

Mr. HOWLAND. We will be very glad to have him.

Mr. RALSTON. I don't know whether Mr. Joyce is here or not.

Mr. MICHENER.. I would naturally join in that request.

Mr. CHANDLER. So say we all.

Mr. GRAHAM. I agreed with you excepting in the one thing, that I thought we were admitting matters here that reflected upon a man who had no chance to defend himself.

Mr. RALSTON. Just one other observation. I am going to ask the committee to call on the Department of Justice for their secret files of the examination into the activities and conduct of William J. Burns from, say, 1920 down; those files which should be, if they are not, here in Washington, and also those in the New York Bureau of Investigation.

I have no cross-examination.

Mr. HOWLAND. I don't quite get the request. Now, if you will just state that again, so that I can understand what you want, from what department this is to come—what is it that you want—the secret files in the Department of Justice relative to the activities of William J. Burns?

Mr. RALSTON. Activities and character.



Mr. HOWLAND. And character of William J. Burns? Do you state to the committee that you have any knowledge of the existence of such a file?

Mr. RALSTON. My information is that there is or was such a file in the department here, and also in the branch of the Bureau of Investigation in New York City. I have that from several sources.

Mr. HOWLAND. The sources of your information I am not responsible for, but I will say to the committee that if we can find any such file to-night it will be here in the morning.

The CHAIRMAN. Now, in reference to this man Macauley, it seems to me that that is not admissible. He has brought charges and Mr. Burns has undertaken to answer, to respond to them. Now, it seems to me that we can not go in and thresh out everything that you can think of in the history of Mr. Burns for years and years back, we have got to stop this thing somewhere.

Mr. FOSTER. You could admit those exhibits that were attached to the Macauley letter, that we have under consideration now, in view of Mr. Burns taking the stand. Let that go in.

The CHAIRMAN. I have no objection, so far as that is concerned.

Mr. CHRISTOPHERSON. And if they want to bring Macauley here, let them bring him.

The CHAIRMAN. We have been for weeks threshing over this one particular thing.

Mr. HOWLAND. May I be indulged just a moment with one further question? Mr. Burns, did you have any conversation with Attorney General Daugherty previous to your appointment to your present position with reference to the Wickersham report?

Mr. BURNS. I did, just before I was appointed. He called that to my attention and asked me what was in it. I told him nothing, and I then went into some detail.

Mr. HOWLAND. You say you told him "nothing"?

Mr. BURNS. I told him there was nothing in it.

Mr. HOWLAND. What did you tell him?

Mr. BURNS. I stated just about as I testified on the witness stand to-day.

Mr. HOWLAND. All right; that is all.

(Thereupon Mr. Burns was excused.)

Mr. RALSTON. I think, then, if Mr. Macauley is not to appear, the statement made by Mr. Burns is entirely gratuitous and ought not to be in the record.

The CHAIRMAN. You have introduced the Macauley matter yourself, and now Mr. Burns is answering it. There has got to be an end to this thing, an end to issues that are absolutely foreign to this investigation so far as I can see—simply trying to show the character of Burns without any attempt to show that it has any relation to the appointment by the Attorney General of Burns.

Mr. HOWLAND. Mr. Chairman, if the distinguished gentleman will strike all reference to Macauley out of his specifications, I am perfectly willing that all the testimony by Mr. Burns in regard to Mr. Macauley may go out of the record.

Mr. RALSTON. I assuredly will not. The committee has agreed already that the Macauley letters should go in, which includes the exhibits.

Mr. MICHENER. Mr. Ralston, don't you think if you had Mr. Macauley within your call—he seems to be your witness—that inasmuch as Mr. Burns has taken the stand and has submitted to cross-examination so that you might ask him any questions you saw fit about the matter, that it might be fair to the committee if you would bring Macauley here, inasmuch as Macauley has submitted an ex parte statement in the form of a letter not under oath, and accompanied by newspaper clippings and evidence of that nature to establish his claim? Don't you think it would be better if the committee could cross-examine him the same as you have had an opportunity to cross-examine the other side?

Mr. RALSTON. I don't know Mr. Macauley's address.

Mr. HOWLAND. Well, it is stated in your own specifications.

Mr. MICHENER. You seem to have been able to get these papers from him.

Mr. RALSTON. I wrote to him for some information, and all I have back in the way of communication is a telegram from New York City. Now, where he is in New York City I don't know—where he was, I mean, several days ago.

One thing more. There was a certain gratuitous statement which was made with regard to Mr. Gompers, and I think Mr. Gompers should have a right to be heard here, having been charged——

The CHAIRMAN (interposing). Have you finished, Mr. Howland?

Mr. HOWLAND. Yes, on 13.

#### TESTIMONY OF SAMUEL GOMPERS—Recalled.

Mr. RALSTON. Mr. Gompers, will you make your statement with regard to Mr. Burns's criticism?

Mr. GOMPERS. I have no recollection of having been as near to Mr. Burns as I have been this afternoon when he passed to and fro. I have no recollection of having any conversation with him upon any subject in the Treasury Department or elsewhere, and I am quite positive that my mind is clear upon that subject.

Mr. GRAHAM. A more important matter, I think, in connection with his testimony would be: Did you send such a telegram as that which he said was produced by the newspaper men, that this was a frame-up of Burns in the McNamara case?

Mr. GOMPERS. It is just as absolutely false as I have reason to believe many of his other statements made this afternoon are false.

Mr. GRAHAM. Don't carry it so far, Mr. Gompers. Answer for yourself.

Mr. BIRD. I don't understand that the testimony was that this telegram came from Mr. Gompers. It was a press report of a statement that Mr. Gompers had made, the way I understood it. The question is, Did he make such a statement?

Mr. GOMPERS. May I be permitted to make my statement as best I can; not as an experienced witness?

The convention of the American Federation of Labor was to be held in St. Louis, Mo. A dispute arose between the central body of labor of that city and some hotel proprietors, and it would have made it difficult for the delegates of the convention to go to St. Louis for the purpose of holding our convention, if we were morally bound

not to patronize the hotels of St. Louis. It was just a week or two or three before the convention was to go into session. I could not permit, if I could help it, such a condition of affairs to prevail and it was my intention that if it did prevail to submit to my associates of the executive counsel the selection of another city for the holding of the convention.

However, I proceeded from Washington to St. Louis for the purpose of attending a meeting of the organized labor body of that city and to present to them for consideration the fact that they were placing themselves, as well as us, in an inenviable position and in a position that would reflect upon the city, upon the labor movement, upon our federation. On the morning, that Sunday morning, the newspapers carried a report that the Los Angeles Times had been destroyed by a bomb; that several lives were lost. Newspaper men came to me and asked me about it.

I said, "I have no knowledge of it, other than what I have seen in the newspapers. I regret it exceedingly. I know of nothing that has happened for which I have so deep and keen a feeling of absolute regret and sympathy for those who have suffered loss." I never mentioned a word in regard to the Burns Detective Agency at that time, or Mr. Burns.

Mr. BIRD. Did you, about the time of the arrest of Mr. McNamara, in Indianapolis?

Mr. GOMPERS. If you will permit me, I did not know at that time—no; I withdraw that. I did not, I could not conceive, that any labor man would be guilty of so grave and gross a crime. I did not see the connection or, indeed, I am sure I made the remark to some of the newspaper men then, "I see no reason why you should come to me, to interview me in reference to an explosion and the destruction of that plant and the killing of those men." It was some time after—I have been very busy and thinking of lots of other things and my memory as to the particular time of the sequence of them might not be as accurate as it should be.

However, the McNamara brothers were arrested. The first information that I had of it, or I believe that the general public had of it, was that those men had been taken.

Mr. GRAHAM. Now, Mr. Gompers, I for one must enter a protest against this long statement. The simple question is did you say that or anything like that to the newspaper men?

Mr. GOMPERS. No.

Mr. GRAHAM. A very simple thing.

Mr. GOMPERS. I want to get to what I did say.

Mr. GRAHAM. I know, but the road that you are traveling is too long; it is very circuitous.

Mr. GOMPERS. I can not help it; I am trying to speak directly.

Mr. GRAHAM. Can you answer this question: Did you or did you not say that, or anything like that?

Mr. GOMPERS. I do not think I did.

Mr. GRAHAM. You did not say that or anything like it?

Mr. GOMPERS. No. Permit me—a man says that I sent a man—Burns said that I sent a man to San Francisco, or Los Angeles, to plead with those men not to plead guilty. That is absolutely without the slightest foundation. I never said anything of the kind, nor

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intimated it, nor could not have done it, even if I wanted to, as I did not want to. What I did say was that, in my judgment, it was just as unlawful to take these men from Indianapolis to California without extradition papers from the governor of California, as from the governor of Indiana. Perhaps my legal conception of it may have been in error.

Mr. GRAHAM. Now the question is: You say you did not send men to ask them not to make a confession or plea of guilty?

Mr. GOMPERS. Yes.

Mr. GRAHAM. Did you send anybody to interview them at that time?

Mr. GOMPERS. Anybody?

Mr. GRAHAM. The papers published at that time something of that sort, and I was curious to know from whence the thought came that was published.

Mr. GOMPERS. I never, never, sent any one to them. The first I heard that these men pleaded guilty was, I think it was on Thanksgiving, the evening before Thanksgiving, I went from Washington to New York and, at the Manhattan Transfer two newspaper men came to me and came in on the train and went with me to New York City. They were the two men who told me that the McNamara brothers had pleaded guilty. I was astounded; I earnestly and sincerely believed them to be innocent, as they had told me.

On my way to California I went to see the men in person and talked with them. They pleaded with me and said: "Sam, we are innocent; because I did not know the printer; I did not know him until I saw him in prison; I never met him—he said, "Tell the boys, whoever you see, that we are innocent; we never committed that or any other crime." I published in the American Federationist a letter from the McNamara boys telling me, insisting that they were innocent, and I believed them; and all that I had to do with that case was to help raise a fund for their defense.

The CHAIRMAN. We will now take a recess until 7:30.

(Thereupon, at 5:30 o'clock p. m., the committee took a recess until 7:30 o'clock p. m.)

## EVENING SESSION.

The CHAIRMAN. We are ready to proceed.

Mr. RALSTON. Mr. Chairman, I want to recall Mr. Gompers a moment. There are one or two questions which he ought to have asked and which I overlooked.

The CHAIRMAN. All right.

## TESTIMONY OF MR. SAMUEL GOMPERS—Resumed.

Mr. RALSTON. Mr. Gompers, you heard the testimony of William Burns this afternoon, relative to some land fraud bill which was introduced in Congress. You probably followed the remarks closer than I did with which he identified you in some fashion. What have you to say about that?

Mr. GOMPERS. I had absolutely nothing to do with the introduction of the bill or the resolution for a congressional investigation.

of the Oregon land fraud cases. As a matter of fact, I had no more interest in the bill than any other ordinary citizen. I was aware of it, after its introduction, but said not one word, nor wrote one word, either one way or another in regard to the proposal. I was not interested in it, as I say, more than any other ordinary citizen.

Mr. RALSTON. Is that all you want to say upon that point?

Mr. GOMPERS. Upon that subject; yes, sir.

Mr. RALSTON. What have you to say about the charge made by Mr. Burns that you had been engaged in hounding him?

Mr. GOMPERS. That is untrue. It occurs to me as preposterous that this man hunter should regard me as hounding him. The fact of the matter is that, after the McNamara confessions, Mr. Burns had quite a large number of engagements, so the reports went, and published and communicated to me orally by gentlemen who were in attendance, at chambers of commerce, boards of trade, and manufacturers' associations, luncheons, and so forth, in which he related, in his own way, his activities in the McNamara case. And from the published report of his addresses and from statements made to me orally by men in attendance at the luncheons, his constant attacks were made upon me, that he was going to get the man Gompers—"the man higher up;" that I had guilty knowledge; if not a participant in the criminal course; that I had incited it and promoted it.

I have already said, and I just want to emphasize the fact, that I had absolutely no knowledge, directly or indirectly, nor remote, that there was anything in contemplation by the McNamaras of this terrible crime, or that their frame of mind was in any such direction. I said that I was not acquainted and did not know of the McNamara who was not a bridge and structural iron worker. I was personally acquainted with the McNamara, the secretary of the bridge and structural iron workers.

Mr. HOWLAND. I think you went into that this afternoon.

Mr. GOMPERS. Sir?

Mr. HOWLAND. Did you not go into that this afternoon?

Mr. GOMPERS. I say—

Mr. HOWLAND (interposing). I say we went into all that, Mr. Chairman, this afternoon. This is not rebuttal.

Mr. GOMPERS. I was not hounding Mr. Burns. I resented his accusations against me. I tried, as a man and a citizen, to prevent his appointment to this high position, which places him—it gave him the power to do what I was led to believe and still believe his course to have been, as officially reported by Attorney General Wickersham to the President of the United States.

Mr. RALSTON. I think that is all.

Mr. JEFFERIS. May I ask a question, Mr. Chairman? Mr. Gompers, when the American Federation of Labor, in November of this year, decided or directed you to have Mr. Ralston take up certain of these charges against Mr. Daugherty, when was that date in reference to the rendering of the opinion by the court in the injunction case in Chicago?

Mr. GOMPERS. I think that the injunction was instituted early in September.

Mr. JEFFERIS. When did the court decide in the injunction case?



Mr. GOMPERS. It decided upon the morning when the application for injunction was made, issuing the restraining order.

Mr. JEFFERIS. Then there was a hearing after that; when was that?

Mr. GOMPERS. I could not tell you the date, sir.

Mr. JEFFERIS. It was just shortly before the executive committee directed this proceeding?

Mr. GOMPERS. I think not, sir.

Mr. RALSTON. I think I may add, for your information, if you will allow me—I think the hearing in Chicago was on the 11th September. The original order went out on the 1st and the hearing on the rule——

Mr. JEFFERIS (interposing). Then there was a subsequent ruling.

Mr. RALSTON. I do not think there was any after the 11th September, that I know of.

Mr. GOMPERS. Yes; there was a subsequent hearing—argument.

Mr. JEFFERIS. I was trying to fix the date when the action was taken here by the executive committee of the American Federation of Labor to go ahead or to take part in these charges against Mr. Daugherty.

Mr. GOMPERS. Yes, sir. There were, as I was about to explain the two phases.

Mr. JEFFERIS. I just wanted the dates.

Mr. GOMPERS. It was objected to, and I have not been able to say and I have no anxiety to say. However, I may say when the executive council——

Mr. MONTAGUE (interposing). May I not ask if there is a specification dealing with that phase?

Mr. JEFFERIS. Yes.

Mr. MONTAGUE. Why should we go into that until we reach the specification?

Mr. JEFFERIS. I was just asking about the dates; I just wanted the dates.

Mr. GOMPERS. The dates, as near as I can recollect—I think it was on the 14th of November when the executive council—or the 16th—when the executive council met in its regular session.

Mr. YATES. I wish to ask a question, Mr. Chairman. Did you write this thirteenth specification—specification No. 13?

Mr. GOMPERS. I did not, sir.

Mr. YATES. Did you cause it to be prepared?

Mr. GOMPERS. In part; yes, sir.

Mr. YATES. Were you the one who suggested it?

Mr. GOMPERS. Yes, sir.

Mr. BIRD. Mr. Chairman, I would like to ask the witness a couple of questions. Mr. Gompers, this is just in order to clear up your testimony before the recess. I did not understand whether you directly answered two questions. One was whether or not at about the time that Mr. Burns arrested Mr. McNamara in Indianapolis you had said, in substance, that it was a frame up of Mr. Burns?

Mr. GOMPERS. I did not say it; but I did say I attacked what was called kidnapping these men from Indianapolis, from the State of Indiana, to the State of California, without any extradition for the

men to give them an opportunity to defend themselves as to whether there was reasonable ground for their extradition into another State.

Mr. BIRD. Did you designate that as a frame up on the part of Mr. Burns?

Mr. GOMPERS. Well, I do not know. I won't say that I did not—that part of it.

Mr. BIRD. Now, the other question was touching whether or not you had sent some one to Mr. McNamara to try and persuade him not to make a confession. Now, the way that question was worded, as I recall it, was that you sent some one to him. Now, I would like to extend that question as to whether, with your knowledge or consent, anyone was sent or communicated with Mr. McNamara on that point?

Mr. GOMPERS. I can not employ language sufficiently emphatic to say that there is absolutely not the slightest foundation in truth for such a statement. I never sent anyone. I never communicated with anyone, either directly or indirectly, to communicate with the McNamaras or anyone for them, to prevail upon them, or influence them, not to plead guilty. And no man was more surprised that they pleaded guilty than I was.

Mr. CHANDLER. Mr. Gompers, do you remember there were impeachment proceedings begun against Mr. Olney? Were you president of the American Federation of Labor at that time?

Mr. GOMPERS. I was; but I do not recall that there were impeachment proceedings against Attorney General Olney.

Mr. CHANDLER. The question I wanted to ask you, if you knew about it, is, did the American Federation have anything to do with it?

Mr. GOMPERS. Not a particle.

Mr. CHANDLER. You have attorneys here, employed by you; they were not present at that proceeding?

Mr. GOMPERS. They were not; nor any attorney or any representative, or anyone authorized to say anything.

Mr. CHANDLER. You say you helped to draw the charge No. 13, or specification No. 13. Of course, if you knew nothing about it, you did not have anything to do with drawing the impeachment proceedings against Richard Olney?

Mr. GOMPERS. I had nothing to do with the drawing of the impeachment proceedings against Richard Olney, and the American Federation of Labor had nothing to do with the drawing of the impeachment proceedings against Richard Olney.

Mr. MICHENER. I think you said, this afternoon, that you had no part in, or had no knowledge of the fact that Mr. Keller was going to start impeachment proceedings, and that you knew nothing about the impeachment proceedings until you read it in the paper.

Mr. GOMPERS. That is true, sir.

Mr. MICHENER. Then did Mr. Keller seek your aid here, or did you seek to aid Mr. Keller?

Mr. GOMPERS. After the—yes; after the executive counsel's direction.

Mr. MICHENER. You then sought Mr. Keller?

Mr. GOMPERS. Yes, sir.

Mr. MICHENER. And did he ask you to employ attorneys here, or did you volunteer to employ attorneys?

Mr. GOMPERS. He asked me no such question. We acted—I act by authority and under direction of the executive council of the American Federation of Labor in directing Mr. Ralston to appear for us in the impeachment proceedings before the Judiciary Committee.

Mr. MICHENER. That is all.

Mr. RALSTON. I will ask you one question: You have spoken the crime of kidnaping having been committed against McNama in taking him out of Indiana. Who committed that; do you know? Have you any reason to know?

Mr. GOMPERS. Mr. Burns, so far as any information was given the public.

Mr. RALSTON. That is all.

The CHAIRMAN. Do you mean to say there was not a requisition for them from California?

Mr. GOMPERS. Yes, sir.

Mr. GOODYKOONTZ. What prompted the executive committee to take this action? Was it for the reason they believed the Attorney General was not a proper person to hold the office, or because of his activities in those cases?

Mr. GOMPERS. I did not hear you, sir.

Mr. GOODYKOONTZ. I say, what motive, what reason, lay behind the action of the executive committee in taking the action you have described? Was it upon the ground and for the reason the committee felt that the Attorney General was an improper person to hold the office, or was their action prompted by his action in bringing about the injunction proceedings?

Mr. GOMPERS. Both.

Mr. FOSTER. Your first meeting of your executive council was after the second injunction was granted, was it not?

Mr. GOMPERS. Yes, sir.

Mr. FOSTER. Was there anything said at that meeting, or was the council advised that Mr. Keller would welcome an attorney?

Mr. GOMPERS. No, sir.

The CHAIRMAN. That is all.

Mr. RALSTON. I beg your pardon, Mr. Gompers. I have one question. Was the executive council in session at the time the injunction was granted?

Mr. GOMPERS. Yes, sir.

Mr. FOSTER. Do you mean September 1 or subsequent thereto?

Mr. GOMPERS. Not when the restraining order was granted, but the other injunction—the permanent injunction. It had not been granted then.

Mr. FOSTER. That is what I mean. The temporary order had been granted, but the permanent order had not?

Mr. GOMPERS. Yes, sir.

Mr. RALSTON. That is all, Mr. Gompers.

(Witness excused.)

Mr. RALSTON. I will call Mr. Joyce.

**TESTIMONY OF MR. MAURICE A. JOYCE, OF WASHINGTON, D. C.—**  
**Recalled.**

(The witness, having been previously duly sworn, testified as follows:)

Mr. RALSTON. Mr. Joyce, when you were on the stand before you testified with regard to the case of Louis B. Beekman.

Mr. JOYCE. Yes, sir.

Mr. RALSTON. When and from whom did you first learn of that case?

Mr. JOYCE. From Mr. Burns.

Mr. RALSTON. About what time?

Mr. JOYCE. Well, now, I can not give dates. I haven't a thing on me. I could look back in a memorandum of mine and find the dates, but my report in this matter would disclose all the dates and other matter.

Mr. RALSTON. Where is that report?

Mr. JOYCE. It is in the department, I suppose. I made the report and it was there, and I presume it is there yet. I can tell about it in a general way and I am perfectly willing to do it, to the best of my recollection.

Mr. RALSTON. When you received——

The CHAIRMAN. Pardon me for a minute. What year was that?

Mr. JOYCE. Oh, about a year ago, I think, or perhaps a little more—about a year ago, I should say.

Mr. RALSTON. When you received your first instructions, after being called on the case by Mr. Burns, will you state in what manner it took and what was said?

Mr. JOYCE. Little was said when this matter was given to me. Mr. Burns sent for me and gave me this file with three or four affidavits, taken by a Mr. Matteson, of the Department of Justice, who is employed under Mr. Harris, if I am correct.

The evidence had been taken some time before. I was told 'to read the file and proceed to New Jersey and look into this case.

Mr. RALSTON. Give, as nearly as you can, the instructions given to you by Mr. Burns, in Mr. Burns's words.

Mr. JOYCE. At that time—there was little said at that time. After the first conference I was told to take the file and to proceed to New Jersey, which I did.

Mr. RALSTON. In a general way, what was in the file?

Mr. JOYCE. The file—am I permitted to go ahead?

Mr. RALSTON. Go ahead.

Mr. JOYCE. The file—I read it between Washington and New York. It was a very thick file, and it charged Beekman with crimes, such as running whisky. It called it "running whisky."

Mr. RALSTON. Explain what was meant by that?

Mr. JOYCE. It was supposed to mean that he was protecting whisky, bringing whisky in, in and about Jersey City, Newark, New York, and in that vicinity. I read the file on my way to New York, and read it through, and I must say now that I was at a loss to find anything in the file itself that I could put my finger on and say I can go to this spot or that spot and find anything. It simply

said that this man was protecting the whisky interests over there in those different cities—Jersey City, New York, Newark, and——

The CHAIRMAN (interposing). Was he a private individual, or was he an official?

Mr. JOYCE. Beekman was a deputy marshal, and he had been suspended on account of these charges.

Mr. RALSTON. Was he at that time a candidate for any office?

Mr. JOYCE. Yes; he was; I learned after I got there, at the Federal courthouse in Jersey City, where Beekman used to act as deputy marshal, that he had applied for the place of marshal there, and that he had, for a long time, been a deputy marshal, but at that time he was suspended and had been for, I do not know how long before that.

Mr. MICHENER. By whom?

Mr. JOYCE. By the Attorney General, or by somebody in authority in the Department of Justice; I presume the Attorney General, or somebody in authority. He was suspended, at any rate. I learned that in the marshal's office from the deputy then in charge in Jersey City.

Mr. RALSTON. Was he a candidate for office?

Mr. JOYCE. He was a candidate for the United States marshalship in that section or that jurisdiction.

Mr. RALSTON. Was he opposed by another faction for that position?

Mr. JOYCE. There was a fight, I learned, between—Mr. Beekman is a Republican—and there was a fight in the ranks of the Republicans there. He, I think, Beekman, was a chairman of some faction over there, and they opposed him, the other faction. There were two factions, and the other faction opposed Mr. Beekman.

Mr. RALSTON. What did you do—explain to the committee—to discover whether there was any grounds for those accusations?

Mr. JOYCE. I tried to follow, as nearly as possible, the instructions given in the file, that he had been protecting liquor. I first visited the principal saloons about Jersey City, worked on it for nearly a week, undertaking to be a safe customer at those places, for the purpose of getting information. It is a very difficult job.

Mr. MICHENER. Did you succeed in being a safe customer?

Mr. JOYCE. I did not, sir; but it will be necessary for you to understand this matter, for me to go into it, because I understand, afterwards, I learned that a letter had been sent by Assistant Attorney General Holland to somebody, either Senator Frelinghuysen or Mr. Lindaberry, over there, that I had undertaken to break down the testimony of the people who gave the affidavits, instead of getting the matter on Beekman. As a matter of fact, I want to state now that I put in a week in hanging around the places that sell liquor in Jersey City, Newark, Union Hill, N. J., over across from New York, and other places where it was said that he had protected the whisky group. I could not find anything, absolutely nothing, or anybody that knew anything about the matter.

Mr. CHANDLER. When was that, about what time; when was that?

Mr. JOYCE. About a year ago—I mean about Beekman having anything to do with liquor interests.



When I could not attach him to it, I thought I would undertake then to find out something about the people who made the affidavits, and then I began to get some place.

I first looked into the reputation, character, and standing of a man named Coe, who was the principal witness against Beekman—made an affidavit. There were the Coe brothers, but Le Roy Coe is the principal one. Le Roy Coe had been employed by the prohibition people, and I went into Newark, where he lived, and made very careful inquiries about him from the chief of detectives, from the enforcement officer in Newark, Mr. DeMoll, and Mr. Palmer, and several others at the enforcement officer's place, where he had been acting from time to time as a witness in prohibition cases. They all told me that Coe could not be believed on oath. The chief of detectives in Newark told me that he would not put Coe on the stand against his worst enemy.

Mr. YATES. Of course, this is hearsay, purely hearsay. The man is telling about some other man. He is not testifying.

Mr. CHANDLER. This man is not being tried. This is a pretty important matter. About as important as it is possible for us to consider.

The CHAIRMAN. I was going to say, this afternoon, we let in a lot of hearsay, and I am not disposed to raise any particular question, if you keep within reasonable limits. I do not propose to continue this course, because we would never get through in the world. We have got to get down to facts, and try to do something. We can not continue this line of evidence, but I will not object to this particular point.

Mr. YATES. I am not objecting, but I want the record to show that this is hearsay.

The CHAIRMAN. There has been a good deal of hearsay evidence introduced.

Mr. RALSTON. I think that it is absolutely necessary to explain what the witness did.

Mr. JOYCE. My report will disclose all of my activities, what I did over there.

Mr. YATES. I think that the witness should get down to facts, and not tell what somebody else told him.

The CHAIRMAN. That is true.

Mr. HICKEY. Is this supposed to be testimony against Mr. Burns?

Mr. JOYCE. I beg your pardon.

Mr. HICKEY. Well, is this supposed to be, the statements that you are making now, to be statements against Mr. Burns?

Mr. JOYCE. Me?

Mr. CHANDLER. What is the purpose of these statements; what do you propose to establish, the innocence of somebody, or are you attempting to show that Mr. Burns used improper methods?

Mr. RALSTON. That is what we hope to establish with them.

Mr. HICKEY. Pardon me, Mr. Chandler, I was wondering whether the witness could not get to the real point at once.

Mr. CHANDLER. That is what I am wondering.

Mr. RALSTON. Perhaps I can help him. I will try to do it.

Did you also look into the character and the reputation of other men?

Mr. JOYCE. Yes; I did.

Mr. RALSTON. Do you remember what statement, if anything, he had made as against Mr. Beekman?

Mr. JOYCE. A man by the name of Walforth, over in Union Hill, testified that he paid Beekman, in his affidavit, testified that he paid Beekman, for protection, Louis G. Beekman, I saw him, and as I say, he testified in his affidavit that he had paid Louis G. Beekman for protection, and I asked him if he could identify him, and he said that he could if he saw him.

I arranged the next evening, in company with Mr. Henry Polen, another agent of the department, that was in New York at that time, to have Beekman at a certain place near Walforth's place; three or four squares from Walforth's place, where he would have an opportunity to identify him. Polen and Beekman were standing in front of a picture show which was all lit up. I got Walforth and brought him by and told him to look good, that Beekman was in that square. As we went by, he looked at everybody in the square, and failed after three trips to identify Beekman at all, and said that he was not in that square. This is all disclosed in my report, however, and I then made my report, and came back here, and it was presented to Mr. Burns, or went through in regular course.

Mr. RALSTON. State, as close as you can, the nature of the report you made to Mr. Burns.

Mr. JOYCE. My report contained my activities over there, for five or six days. I was called back hurriedly, before I had quite finished. Later a letter came from Lindaberry over here asking that I be allowed to come over there and testify for the defense. Mr. Burns sent——

Mr. RALSTON (interposing). Do you mean the defense in this proceeding, or in some other proceeding?

Mr. JOYCE. It seems that Mr. Burns, or somebody—I do not know who—sent the matter over there; but they sent the file back there again; and I was advised when I went over there that a man named Holmes, an agent of the Department of Justice, had brought those witnesses before the grand jury in Newark and had Beekman indicted. Then Mr. Lindaberry sent for me to come over there, and I went over there. They did not call the cases that I was a witness in when I went over there. But Beekman was acquitted of the charge they did bring against him, and the other charges have not been brought at all.

Mr. RALSTON. Now, coming back to something else that you have perhaps passed over, after you made your report to Mr. Burns, did you have any subsequent interview with Mr. Burns as to the course you should take or as to the course you had taken?

Mr. JOYCE. Yes, sir.

Mr. RALSTON. Will you state what that interview was?

Mr. JOYCE. I was in Mr. Burns' office and undertook to explain this matter to him. He said my plain duty over there was to take that son of a b—— before the grand jury in Newark and have him indicted. I told him I did not think so. He said I had no business looking into the matter of the witnesses, or the ones that made the affidavit; it was none of my d—— business. I told him I thought it was; that I could find nothing against Beekman; and I was trying

to tell him how easy it was to have a man indicted. Whereupon, he flew into a rage and told me it was none of my d——business, etc.; that my plain duty was to take those witnesses before the grand jury in Newark and have this man indicted—which was done afterwards by some other agent, or some other person, I do not know who.

Mr. RALSTON. Did you learn the reputation of these two witnesses on whom Mr. Burns relied?

Mr. JOYCE. I certainly did.

Mr. RALSTON. Will you state what that was?

Mr. JOYCE. The very worst, I think, I have ever heard. Neither one of them would be believed on oath, according to the very many men I talked with, business and professional men in that section.

The CHAIRMAN. Is that all?

Mr. RALSTON. I think that is all.

The CHAIRMAN. Mr. Howland, do you want to take the witness?

Mr. HOWLAND. You say the man was indicted?

Mr. JOYCE. Yes, he was.

Mr. HOWLAND. On five different indictments, or six?

Mr. JOYCE. I do not know how many.

Mr. HOWLAND. Half a dozen?

Mr. JOYCE. By these very witnesses, as I understood when I went over there later.

Mr. HOWLAND. Five of them are still pending?

Mr. JOYCE. I am not sure.

Mr. HOWLAND. He has not been tried on them?

Mr. JOYCE. You might be accurate about that, sir. I do not know.

Mr. RALSTON. Do you know when they should have been tried?

Mr. HOWLAND. I object to that question—when they should have been tried. I object to that question, and I do not care to ask another question of this gentleman.

The CHAIRMAN. That is not proper redirect examination; and I do not think it is important anyhow when he should have been tried.

Mr. MICHENER. Just one question, and that is this: Now, you have given us a list of those men to whom you talked about the respectability of those witnesses.

Mr. JOYCE. Yes, sir.

Mr. MICHENER. One you named was the chief of police there?

Mr. JOYCE. The chief of detectives.

Mr. MICHENER. The chief of detectives. These charges were for prohibition violations, were they not?

Mr. JOYCE. What do you mean?

Mr. MICHENER. These charges that were filed against this man.

Mr. JOYCE. No; one of the charges against this man was blackmail.

Mr. MICHENER. I thought you said they were for liquor running, or something of that kind.

Mr. JOYCE. No; he was a witness in prohibition cases.

The CHAIRMAN. Beekman?

Mr. MICHENER. Mr. Beekman?

Mr. JOYCE. Not Beekman; I am speaking about Cole.

Mr. MICHENER. No; not Cole.

Mr. JOYCE. I beg your pardon; I thought you were talking about Cole, the witness in Newark.

Mr. MICHENER. Yes; I was talking about Cole; he was the witness——

Mr. JOYCE (interposing). I never interviewed Cole; I never went near him after I was——

Mr. MICHENER (interposing). Then Beekman was the man charged with the offense which you were investigating?

Mr. JOYCE. Yes; that was the man.

Mr. MICHENER. And he was charged with liquor running?

Mr. JOYCE. That is the gist of the thing.

Mr. MICHENER. And when you went over there to make the investigation, you went to the chief of detectives.

Mr. JOYCE. No, not then; later, very much later. I spent a week investigating the charges against Beekman before I ever went on the people that made the affidavits at all; I spent nearly a week trying to find something against Beekman there, and could locate nothing.

Mr. MICHENER. Yes; you were just going around in a strange land, slipping around into these places where you could not buy any liquor——

Mr. JOYCE. I did buy liquor in those places.

Mr. MICHENER. I thought you said you did not.

Mr. JOYCE. Yes; I did buy liquor in those places.

Mr. MICHENER. You bought liquor there, then.

Mr. JOYCE. I became a safe customer in those places, for the purpose of finding out something about Beekman; and even then I could not find anything about Beekman.

Mr. MICHENER. Beekman was charged with violation of the liquor law; and you were there to investigate Beekman?

Mr. JOYCE. Yes.

Mr. MICHENER. And during that time, when he was charged with violating the liquor law, you were there helping him to violate it?

Mr. JOYCE. That was the only way I could find out anything about it.

Mr. MICHENER. Have you reported to the department since that time?

Mr. JOYCE. Yes; I made a report.

Mr. FOSTER. Did you report the names of these people from whom you purchased the liquor when you came back to Washington?

Mr. JOYCE. No, sir.

Mr. FOSTER. Why did you not report them?

Mr. JOYCE. Because I simply went over there to find out about Beekman, and I had to go to those places; it is done right along.

Mr. FOSTER. You were one of the officers of the Department of Justice, sent there for the purpose of investigating persons charged with violating the law, and you were there for the purpose of finding evidence against a man who had violated the liquor law.

Mr. JOYCE. Yes, sir.

Mr. FOSTER. Now, you have stated that you purchased liquor in those places and that you made a report to the department?

Mr. JOYCE. Yes, sir.

Mr. FOSTER. Well, did you report to your chief that the liquor law was being violated over there and that you yourself had purchased liquor in violation of law at numerous places? Did you do

anything of that kind? Just answer that question: Did you make a report of those violations?

Mr. JOYCE. My report will disclose everything that I did there.

Mr. FOSTER. Just answer that question: Did you report those violations by yourself of the liquor law?

Mr. JOYCE. Well, I could not go to a Sunday school to get this information.

Mr. FOSTER. But you are here charging Mr. Daugherty——

Mr. JOYCE (interposing). I am not charging Mr. Daugherty with anything.

Mr. FOSTER. But you are complaining because Mr. Daugherty did not enforce the law. Now, you were one of Mr. Daugherty's agents whose duty it was to go out and assist him in enforcing this law, and you went out to investigate certain cases of law violations, and in that investigation you helped to violate other laws, and you knew about those conditions. Then, do you not think it was your duty as one of the officers of the law to come back here and report to your chief that they were violating the law over there; that they were selling liquor, as you stated awhile ago, indiscriminately in several saloons; did you do that?

Mr. JOYCE. They are doing it all the time there.

Mr. MICHENER. The question is, Did you report those violations to your chief?

Mr. JOYCE. My report will show——

Mr. MICHENER (interposing). I simply asked you if you reported those violations to your chief? Did you tell him who was violating the law over there?

Mr. JOYCE. Well, I would have had to make a hundred pages of my report to tell him of the people that were violating the law in New Jersey at that time. [Laughter.]

Mr. MICHENER. And still you think there was something wrong because somebody who had violated the law could not be convicted?

Mr. JOYCE. Well, I simply could not get any information against Mr. Beekman in those places.

Mr. MICHENER. No; but the very men you went to for information were opposed to the prohibition law, were they not?

Mr. JOYCE. Well, they sent me to investigate Mr. Beekman.

Mr. MICHENER. And the chief of detectives, the man to whom you were sent, was known to be absolutely opposed to the enforcement of the prohibition law in that locality, was he not?

Mr. JOYCE. I do not know that.

Mr. MICHENER. You did not know that?

Mr. JOYCE. I did not.

Mr. MICHENER. That is all.

Mr. FOSTER. You did not report to them that you had hundreds of violations of the law, did you?

Mr. JOYCE. How do you mean—hundreds of violations of the law?

Mr. FOSTER. You just said you had hundreds of violations of the law.

Mr. JOYCE. Why, there are hundreds of saloons in Newark.

Mr. FOSTER. Let us get down to the point. You saw so many violations of the law that you did not report any of them; is that correct?

Mr. JOYCE. No, sir.



Mr. FOSTER. Did you, in your report, or did you not report these violations of the law to your chief?

Mr. JOYCE. I can not say positively that I put any number of them in there.

Mr. FOSTER. Well, did you put one in your report?

Mr. JOYCE. I may have.

Mr. FOSTER. Well, did you?

Mr. JOYCE. I can not say positively.

Mr. FOSTER. Well, if it would take so many pages to put them all in your report, why did you not put one in?

Mr. JOYCE. I can not answer that question.

Mr. FOSTER. Then, the chief of police, or the chief of detectives, as you call him, in a town that was wide open was the fellow that you were depending on to get information concerning the violation of the law?

Mr. JOYCE. Well, the chief of detectives could tell me better than anybody I knew.

Mr. FOSTER. Well, he did not tell you what you were sent there to find out, did he?

Mr. JOYCE. He told me what I asked him about.

Mr. FOSTER. Well, you could not get from him any information against Beekman, the man that you were investigating?

Mr. JOYCE. Beekman?

Mr. FOSTER. Yes.

Mr. JOYCE. I did not ask him about Beekman; I asked him about Cole.

Mr. FOSTER. You went over there to find out about Beekman, did you not?

Mr. JOYCE. Yes; and I spent a week trying to find out about him.

Mr. FOSTER. In your attempt you found liquor violations by the hundred and as an agent under oath of the Department of Justice you reported none of them?

Mr. JOYCE. Oh, yes; I did, too; they are going on over there yet.

Mr. FOSTER. Who did you report it to?

Mr. JOYCE. My report will disclose that.

Mr. FOSTER. You did not report any of them in your report, did you?

Mr. JOYCE. It is not customary.

Mr. FOSTER. You did not do it?

Mr. JOYCE. I do not believe I did.

Mr. FOSTER. And you facetiously remarked that you would not go to a Sunday school to investigate violations of the law?

Mr. JOYCE. I did not.

Mr. FOSTER. If you found Beekman such an honorable man that nobody but a Sunday school member would know about him, you might have found somebody who did know about him at Sunday school?

Mr. JOYCE. I don't know.

Mr. FOSTER. You specialized on saloons?

Mr. JOYCE. I had to go there to find these violators.

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Mr. FOSTER. You found hundreds, and under your oath as an officer you reported none of them?

Mr. JOYCE. I reported on his case when I got back.

Mr. FOSTER. But none of the violations?

Mr. JOYCE. I was not over there to close up those saloons.

Mr. FOSTER. And you did not report any violations. You reported that you found Beekman to be a pretty good fellow and said nothing about the saloons running wide open.

Mr. RALSTON. I understand that the report is here.

Mr. MICHENER. What is your occupation now?

Mr. JOYCE. I am in the investigating business in the District of Columbia.

Mr. MICHENER. You are a private detective?

Mr. JOYCE. If you wish to call it that; yes, sir.

Mr. MICHENER. What was your occupation before that?

Mr. JOYCE. I was an agent of the Department of Justice.

Mr. MICHENER. Were you ever a bartender in the District here?

Mr. JOYCE. No, sir.

Mr. MICHENER. Never?

Mr. JOYCE. No.

Mr. MICHENER. You went over there, then, to investigate the character of certain witnesses who had filed affidavits that this man Beekman had violated the law?

Mr. JOYCE. Yes.

Mr. MICHENER. And you say you did not go to Sunday schools, but you went to saloons?

Mr. JOYCE. I did not say that, sir, at all, because I could not find out anything.

Mr. MICHENER. You went to the saloons to find out the character of the Sunday school people, did you not?

Mr. JOYCE. I went there to find out if any of them could tell me anything about Beekman.

Mr. MICHENER. The Sunday school people were making complaint that the law was being violated by this man, and when you went there to find out this man's character, you went to the saloon keepers and those in sympathy with the saloon keepers to see whether or not you could believe the testimony of the Sunday school people; that is about it, is it not?

Mr. JOYCE. I am sure you want to be fair, sir.

Mr. MICHENER. I surely do.

Mr. JOYCE. I did not want to find out his character; I wanted to find out if those charges in those affidavits were true.

Mr. MICHENER. You went there to find out whether or not you could believe the men that had sworn to the affidavits?

Mr. JOYCE. Not from the saloon keepers, because I did not expect to find it there.

Mr. MICHENER. Did you, Mr. Joyce, ever hear of any dishonorable means used by Mr. Burns influencing the grand jury to indict Beekman?

Mr. JOYCE. No, sir; I did not.

Mr. MICHENER. Then as to the question of whether he was guilty or not or prima facie guilty or not was the difference between you

and the grand jury—the grand jury thought he was guilty and you did not.

Mr. JOYCE. I did not go before the grand jury over there.

Mr. MICHENER. You said you found no evidence of his guilt, and yet the grand jury indicted him on a number of different counts.

Mr. JOYCE. They say they did, sir; I do not know how many.

Mr. MICHENER. Then there is a slight discrepancy in your testimony—a difference between Jersey City and Europe. You started out by saying that you found no liquor, that it was a hard job, I believe; and finally you testify that you found so many violations that you could not report any of them. Will you please explain that. There is a discrepancy right there about the “hard job.”

Mr. JOYCE. I did not mean that, sir. I meant this, that it was a hard job to find anybody that knew anything about Beekman at all.

Mr. MICHENER. And you said it was a hard job to get liquor.

Mr. JOYCE. Oh, no; not at all.

Mr. FOSTER. You said it was hard to get a jury in Jersey to convict a man like that.

Mr. RALSTON. If I understand you correctly, you went first to the liquor people who were interested in liquor running to discover whether they knew anything about Beekman in connection with offenses of that kind.

Mr. JOYCE. I did everything I could to reach those people; yes, sir.

Mr. RALSTON. And you went to a different class of people to discover as to the character of Cole and Walcott; is that correct?

Mr. JOYCE. That is correct, sir.

Mr. RALSTON. In order to ingratiate yourself with the liquor people and find out whether they knew anything about Beekman in connection with such an offense, you did buy liquor?

Mr. JOYCE. Well, I could not hunt around there very long without doing something, or they would run me out.

Mr. RALSTON. And the liquor people knew nothing about Beekman; is not that correct?

Mr. JOYCE. They knew nothing about him. There is where I expected to get the information I went for.

Mr. RALSTON. This report is here; I ask that it be produced and that the witness have an opportunity to see it and read it.

Mr. FOSTER. Let me see if I understood. Did you come back or were you called back after the first four or five days?

Mr. JOYCE. No, sir; I was there I do not know how many days.

Mr. FOSTER. About a week?

Mr. JOYCE. About a week, but I was glad to come back and be sent to another point.

Mr. FOSTER. I wondered whether you voluntarily left that liquor territory or were called back.

Mr. JOYCE. I was called back.

Mr. MICHENER. You have stated you are a detective, and you have stated just now that they have got it here in the District.

Mr. JOYCE. I presume they have.

Mr. MICHENER. You are presuming under oath. You stated, Mr. Detective, that they have it here just the same as over there.

Mr. JOYCE. I hear it.

Mr. MICHENER. Are you going before a grand jury to make a report of that condition?

Mr. JOYCE. That would be nothing but hearsay.

Mr. MICHENER. You say that would be nothing but hearsay. Is your testimony here hearsay? Then why did you make a statement that they have it here just the same as over there [indicating], and then, when pinned down to tell the truth, you say other people say so—that it is hearsay?

Mr. JOYCE. That is all it is; I do not know of my own personal knowledge.

Mr. MICHENER. Whenever you speak under your oath, you should state facts. These are serious matters.

Mr. JOYCE. I understand that, but we hear there is liquor every place from time to time; we read it in the papers.

Mr. MICHENER. Then you, as an officer of the law and a former agent of the Department of Justice——

Mr. HICKEY. Ought we not to confine ourselves to the case?

The CHAIRMAN. Yes. We are entirely outside of it now.

Mr. MICHENER. I guess that is right. I withdraw my question.

Mr. RALSTON. Did you return to the department your expense account?

Mr. JOYCE. Yes, sir.

Mr. RALSTON. Did your expense account contain the items for the purchase of liquor?

Mr. JOYCE. The purchases of liquor were very small, and I presume my expense account contained it, probably not in words.

Mr. RALSTON. Was it put in such shape that Mr. Burns understood it?

Mr. JOYCE. I would not drink the liquor that they sold over there, anyway.

Mr. RALSTON. Was it put in your expense account in such shape that Mr. Burns understood what it signified.

Mr. HOWLAND. I object to that.

The CHAIRMAN. Sustained.

Mr. RALSTON. I guess they can be understandings.

Mr. FOSTER. The witness can not come in here and give his opinion as to an understanding; he can tell how he put it in there.

Mr. JOYCE. We are allowed simply \$4 a day, or was—I suppose it is so yet—and whatever little I spent was spent out of that \$4, just enough to live on.

Mr. MICHENER. I think you said you did not purchase any liquor.

Mr. JOYCE. I did not drink it. I tried to get it and made every effort to get acquainted with people in order to learn something.

Mr. MICHENER. Then, as a matter of fact, you did not get any liquor over there, did you?

Mr. JOYCE. Oh, yes, I did; I did not drink it; I threw it away; I did not dare to drink it.

Mr. BOIES. You went to those saloon men to find out if those men who were church members were violating the law?

Mr. JOYCE. I had nobody else to go to.

Mr. BOIES. Did you expect those men who were running saloons would give you any testimony against a man in the same business?

Mr. JOYCE. That was the only purpose in visiting them, was try to get information about the source; it was the only purpose visiting them at all.

Mr. BOIES. Did you expect to get from those saloon men——

Mr. JOYCE (interposing). If I could not get it there, I could not get it at all.

Mr. BOIES. Did you expect to get it from them against another whisky man?

Mr. JOYCE. I might have gotten it.

Mr. BOIES. Did you expect to get it?

Mr. JOYCE. I can not say—well, I did expect to get it at one time. I expected I might find somebody who would get me some information about it.

Mr. RALSTON. Have you stated fully your conversation with Mr. Burns after you returned?

Mr. JOYCE. Yes, sir; I think I have.

Mr. RALSTON. In reference to procuring indictments?

Mr. JOYCE. Yes, sir; I think I have.

Mr. RALSTON. Now, I will ask you if you see your report—the gentlemen do not seem to be anxious to show it.

Mr. HOWLAND. I will show it only if the committee orders it shown and not before.

Mr. RALSTON. I think the committee ought to order; at least I respectfully submit they should—the whole memorandum made at the time.

Mr. HOWLAND. If this has not gone far enough to satisfy the committee, we are perfectly willing to go on.

The CHAIRMAN. It does not seem to me we ought to encumber the record any more with this. It has not the remotest bearing upon whether Mr. Burns is competent—whether the appointment of Mr. Burns by Mr. Daugherty was culpable or not; and that is the real question at issue here.

Mr. MICHENER. It might affect the credibility of the witness in this examination.

Mr. CHANDLER. Mr. Ralston, will you answer me? What is the purpose of this witness's testimony, anyhow?

Mr. RALSTON. The purpose of the testimony was, principally, in the end to show the conversation had with Mr. Burns, in which he expressed his information to the witness, that it was his duty, beyond all question, to get the——

Mr. CHANDLER (interposing). Let me ask you this: Is it not a fact that this man went over there to gather testimony, and, according to his own statement, he did not gather it; and yet on testimony gotten from somewhere that grand jury did indict this man indicating the judgment of Mr. Burns rather than the witness?

Mr. RALSTON. He is told it makes no difference how worthless the witnesses are against a man, how unbelievable they are, that it is the duty to get the man indicted.

Mr. CHANDLER. He did not testify how worthless.

Mr. RALSTON. I think he has.

Mr. CHANDLER. He was told not to usurp the function of the accusing body—the grand jury—but to go and put his testimony before them.

Mr. RALSTON. This man made an investigation and examination.



Mr. CHANDLER. What right has the gatherer of testimony to usurp the functions of the grand jury as to the credibility of the witnesses?

Mr. RALSTON. Somebody has to determine that, and it has to be brought before the grand jury. If the prosecuting attorney will not allow a trial to go before the grand jury——

Mr. CHANDLER. I understand that, but in introducing this witness, is it to show that Burns to-day or a year ago had a disposition to prosecute an innocent man?

Mr. RALSTON. Yes.

Mr. CHANDLER. What right has he to absorb the functions of the grand jury, which is supposed to be acting free from intimidation, which did actually find a man guilty and indicted him?

Mr. RALSTON. The grand jury never could find him guilty.

Mr. CHANDLER. But it did indict him.

Mr. RALSTON. It is the duty of the prosecuting officer to take all the care in the world to prevent the indictment of a man who is innocent, and it is his duty to take all care in the world not to present——

Mr. CHANDLER (interposing). In order to show that Burns is a bad man, it would be necessary to show that he acted maliciously, would it not?

Mr. RALSTON. No.

Mr. CHANDLER. If he acted maliciously, why did the grand jury indict him, because the grand jury actually did indict? Is there any evidence that the grand jury was tampered with, browbeaten, or intimidated?

Mr. RALSTON. There was evidence tending to show that there was evidence brought before the grand jury of a man who was denominated as a blackmailer and otherwise objectionable by competent people.

The CHAIRMAN. That has nothing to do with this case.

Mr. GOODYKOONTZ. As you expressed it a moment ago; this hearing has degenerated into a farce. Here is an allegation against the Attorney General of the United States, charging him with high crimes and misdemeanors. As one member of this committee, I am not going to sit here and permit any more testimony of that sort to come before the committee without my objection.

The CHAIRMAN. Have you any more testimony on this specification?

Mr. RALSTON. No; not on this subject. I have no testimony on this charge. I call the committee's attention to the fact that Burns has put his character in evidence.

The CHAIRMAN. I do not think so. You put his character in evidence, and he appeared on the stand in answer to it, and he had a perfect right to do that if he wanted to; at least, if the committee was willing that he should. We can not go on here and thrash out everything that you can suggest against Burns or against any other individual. We do not intend to do that, unless you connect it with the Attorney General.

Mr. RALSTON. He has put on one character witness, which I submit has opened the door to a suitable reply, and we reserve the right.

The CHAIRMAN (interposing). That character witness was the testimony of the man who recommended his appointment at the time he was appointed and vouched for his character at that time,

course you are attacking him as of the time when he made appointment.

RALSTON. We reserve the right, so far as we can reserve it, to present witnesses to show his character, he having made the issue.

CHAIRMAN. You made this issue, so far as that is concerned.

HOWLAND. I do not think we care to put on any testimony, I call your attention to the language of specification 13. It states that the Attorney General, with full knowledge at the time such appointments—that they were men of such character—such language is used there—and I would like to ask Mr. Ralston whether he calculates to put on any testimony or has anyone else in mind?

Mr. RALSTON. I have not at this moment.

Mr. HOWLAND. I would like to ask Mr. Keller if when he prepared that specification he had anyone else in mind except Mr. Burns?

The CHAIRMAN. My impression is that we have come to the end of this charge. You can ask Mr. Keller if you want to, but there is no specification covering anything else than what has been gone into to-day, and without a specification I do not think the committee will be likely to receive evidence.

Mr. FOSTER. We are on No. 4, then, are we not, Mr. Chairman?

The CHAIRMAN. Yes.

Mr. RALSTON. I will call Mr. Stevenson.

#### TESTIMONY OF MR. THOMAS STEVENSON, CLEVELAND, OHIO.

(The witness was duly sworn by the chairman.)

Mr. RALSTON. Mr. Stevenson, will you state, please, your occupation and residence?

Mr. STEVENSON. Lawyer; Cleveland, Ohio.

Mr. RALSTON. Are you attorney for the Brotherhood of Locomotive Firemen?

Mr. STEVENSON. Of the Brotherhood of Locomotive Firemen and Enginemen.

Mr. RALSTON. And for how long have you been such attorney?

Mr. STEVENSON. About two years.

Mr. RALSTON. During the past summer was your attention directed to the large number of railway accidents occurring in this country?

Mr. STEVENSON. Yes, sir.

Mr. RALSTON. About what time was your attention first directed to it?

Mr. STEVENSON. About the middle of August.

Mr. RALSTON. Did you receive any instructions from your clients to take any steps in regard to that condition?

Mr. STEVENSON. May I put it this way? The Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen worked very closely in unison. They have what is known as a joint Chicago agreement. While they are separate organizations, they work very closely in unison. And the agents of the two brotherhoods called on Mr. Oscar J. Horn, who is attorney for the engineers, and Mr. Robertson, who is president of the firemen's organizations, called on me, and we had a conference, and at

that time it was pointed out—rather, the fact that complaints were being received in large numbers from their men over the country that the requirements of the safety statutes were not being complied with, and that there was great unrest among the men, that accidents were getting more frequent and they wished to know whether they had any recourse of any kind under those circumstances.

Mr. FOSTER. When was that?

Mr. STEVENSON. That was some time during the month of August.

Mr. BIRD. This year?

Mr. STEVENSON. Yes, sir.

Mr. RALSTON. What was the result of your consultation with Mr. Horn?

Mr. STEVENSON. We advised them we thought there was a legal remedy.

Mr. RALSTON. And what was the nature of the remedy that you had in mind—

Mr. FOSTER (interposing). Just a moment. Is it competent for the attorney to state here what he advised his clients he thought was the proper remedy? I take it the purpose of the testimony is to bring something home to the Department of Justice.

Mr. RALSTON. I expect to follow it up that he called attention of the Attorney General to the same condition.

Mr. FOSTER. I wonder if that is competent, rather than asking Mr. Stevenson to tell us what he advised his clients.

Mr. RALSTON. His position may be correct in form. I will not object if you think it is proper.

Mr. FOSTER. But why bring it to the Attorney General?

Mr. RALSTON. Personally, I am inclined to think you are correct about it, but I want to get on with what seems to be the simplest way of coming to the Attorney General.

Mr. FOSTER. Why not come to the point of the Attorney General?

Mr. RALSTON. We will come there quickly, at least if the gentleman will allow it.

Will you please proceed and say in consequence of your conclusion what steps did you take?

Mr. STEVENSON. Is it in order to say that these steps we contemplated were deferred on account of the President's address in Congress on the 18th of August?

Mr. RALSTON. Yes.

Mr. STEVENSON. At the time that we were discussing this matter the President called on the joint session of the two Houses of Congress and called attention to the fact that we were discussing—called attention to the deteriorated condition of locomotives.

The CHAIRMAN. Who did you call that to the attention of?

Mr. STEVENSON. At the time we were discussing it this appeared in the public press.

Mr. JEFFERIS. The President's message?

Mr. STEVENSON. The President's message; and he at that time stated that all the laws, both to restrain conspiracies and to interfere with interstate commerce, and the laws to insure the highest service in the railroad service, would be invoked.

And matters ran along, and, of course, on the 1st of September action was taken by the Department of Justice looking toward stopping alleged conspiracies to interfere with interstate commerce.

In view of the President's address to the joint Houses, we naturally contemplated that if he had knowledge that there was a breakdown in locomotive power and a general let down in the inspection laws and the safety laws that the department would next take steps to enforce those.

So, consequently, we awaited action along those lines.

We were familiar with the report that was made by the Interstate Commerce Commission to the Senate that safety statutes had practically been advocated by the railroads; that the instructions of the Government inspectors were being set at naught; that the railroads themselves contested their inability to inspect, because the men were on strike.

Those were some of the reasons given in the report of the Interstate Commerce Commission to the Senate. But we thought that sweet reasonableness would have to be exercised; we could not expect the Interstate Commerce Commission or the railroads, or anyone else to do the impossible.

But nothing was done and conditions continued to get worse. We had very grave complaints from some of the railroads, and we got many petitions from the committees and the general chairmen from various railroads to be permitted to go on strike. Some of the men threatened to go on outlaw strikes. The men were kept at work by the chief executives by threats of the severest penalties of the brotherhood laws. However, conditions got to such a state that in the middle of October our clients insisted that we must attempt to do something.

Reading the bill of the Attorney General in the Chicago case, he announces that it is the duty of the Attorney General to enforce these safety statutes. That being the case, we felt that it was our duty to start——

Mr. RALSTON (interposing). Have you that bill with you, Mr. Stevenson? I wish you would call particular attention to that section of the Attorney General's complaint in which that statement was made.

Mr. STEVENSON. On page 36 of the bill, paragraph 14, in paragraph E, he says:

Furthermore, it is the duty of the Attorney General of the United States to see that all laws of the United States are enforced which are for the protection of the public, and this applies with special force to those laws and rights of parties fixed by governmental bodies which can not be enforced or are difficult of enforcement by action brought by a private citizen. Such power is vested in the Attorney General by the direct and implied provisions contained in the statutes creating and defining the duties of his office and of the Department of Justice. All power relating to the regulation of interstate and foreign commerce is vested by the Constitution in the Congress of the United States, and it is especially the duty of the Attorney General to see that said provisions of the Constitution and all congressional legislation based thereon be enforced, and that all findings and orders of bodies created by Congress for the purpose of preserving the free and unhampered flow of interstate and foreign commerce be observed.

Mr. RALSTON. Did you in August, 1922, find that there were orders and regulations of governmental bodies which were not being enforced?

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Mr. STEVENSON. It was reported in hundreds and perhaps thousands of instances by our members of the organization that the regulations of the Interstate Commerce Commission and of the bureau of locomotive inspection were not being enforced. The facts were that in the cabs of the locomotives it is required by the Interstate Commerce Commission, by the regulations, that a certificate shall be placed in the cab stating the date of certain requirements, such as boiler washouts, hydrostatic tests, tests of the safety valves, tests of the steam gauges, and these certificates that are placed in the cab are to show the date so that the engineers can have some notice of what has gone on, and this was not being done.

Mr. RALSTON. Was that general throughout the country?

Mr. STEVENSON. Largely; yes.

Mr. RALSTON. Any sections worse than others or roads worse than others within your knowledge?

Mr. STEVENSON. At that time it was a pretty general condition.

Mr. RALSTON. Now, the time we are speaking of is about the middle of August?

Mr. STEVENSON. Yes, sir.

Mr. RALSTON. You found that nothing came, then, of the President's message. What next did you do?

Mr. FOSTER. You don't claim that Congress was called into session the middle of August? It was the latter part of August they met.

Mr. STEVENSON. On the 18th of August the President addressed the joint Houses, according to the Congressional Record.

Mr. RALSTON. Finding nothing done, what was your next step?

Mr. STEVENSON. We asked for an interview with the President.

Mr. RALSTON. What date was that?

Mr. STEVENSON. That was October the 11th.

Mr. RALSTON. And what happened at that interview?

Mr. STEVENSON. We placed our trouble before the President and called to his attention—probably needless, because he was very sympathetic with us and treated our request with every consideration. He pointed out that he had cooperated with the Interstate Commerce Commission in an endeavor to get through Congress an appropriation for additional inspectors, and he expressed great sympathy for the railroad engineer or fireman who had to go out on a defective locomotive or an uninspected locomotive, and he suggested that we might take the matter up with the Attorney General.

Mr. RALSTON. What did you do in consequence of that?

Mr. STEVENSON. The President made an appointment for us the same day, and we took it up with the Attorney General on the afternoon of October 11.

Mr. RALSTON. The Attorney General in his answer fixes the 1st of November as the date when his attention was first called to it—I won't say first—when his attention was called to it. The answer is drawn in a peculiar way.

Mr. JEFFERIS. I think it says when the Interstate Commerce Commission sent it over, wasn't it?

Mr. RALSTON. Well, I don't know about that. He says that, "My attention was called to it on October 1," carrying the plain inference that his attention was not called to it before that date—November 1 I should have said if I did not.

Mr. STEVENSON. I have not seen the copy of the answer.



Mr. RALSTON. That is the statement, at any rate. Now, your interview was on the 11th of October instead of the 1st of November?

Mr. STEVENSON. Yes.

Mr. RALSTON. What happened at that interview?

Mr. STEVENSON. We went——

Mr. RALSTON (interposing). Who was present?

Mr. STEVENSON. At that conference was the Attorney General, Mr. Horn—Oscar J. Horn—and myself.

Mr. RALSTON. Anybody else?

Mr. STEVENSON. No; not at the conference.

Mr. RALSTON. Will you state what happened at that conference, and the result, if anything, from it?

Mr. STEVENSON. We had written up our story, our complaint, for the President, attaching to our letter a list that had been compiled on 10 different railroads of the conditions that existed on 10 particular railroads, giving the number of the locomotive on the particular railroad and its particular defect or trouble at that time.

Mr. RALSTON. Have you a copy of that communication which, if I understood you correctly, you showed to the Attorney General?

Mr. STEVENSON. Yes, sir.

Mr. RALSTON. Is this it [showing a paper to the witness]?

Mr. STEVENSON. That is not a copy of the letter. I just have my own file.

Mr. RALSTON. Is this a copy of the statement you handed to the Attorney General showing the number of defects [handing a paper to the witness]?

Mr. STEVENSON. That is it.

Mr. RALSTON. We will offer this memorandum.

Mr. STEVENSON. Show it to Mr. Howland or Mrs. Willebrandt.

(Mr. Ralston handed the paper to Mr. Howland.)

Mr. HOWLAND. What is it?

Mr. RALSTON. A document laid before the Attorney General on October 11, showing the defective conditions of the railways on that date, about that date, in this country—10 railroads.

Mr. HOWLAND. October 11 this was presented?

Mr. RALSTON. Yes, sir.

Mr. BOIES. What were those reports of the defects based on?

The CHAIRMAN. That was a month after the impeachment charges were made. That would not be competent.

Mr. RALSTON. The railroads are enumerated, and there is a memorandum showing some of the defective engines on the Atchison, Topeka & Santa Fe Railroad.

The CHAIRMAN. I think the question of what we ought to do with it ought to be decided before we undertake to read the contents.

Mr. RALSTON. I don't mean to be too precipitate.

Mr. CHANDLER. And the further objection that the Interstate Commission was not the proper place to file this complaint, anyhow, or any of this information.

Mr. RALSTON. The Attorney General says it is the proper place, and said so in Chicago on the 1st of September.

Mr. HOWLAND. That was a general statement in regard to the enforcement of the law.

Mr. RALSTON. No; it was a specific statement with regard to the enforcement of these laws.

Mr. FOSTER. Which can not be enforced or are difficult of enforcement by actions brought by private citizens, is the qualification here. It is a question whether Congress vested the power in the Interstate Commerce Commission to handle this.

Mr. RALSTON. It goes further than that before that. It says it is his duty to enforce these laws.

Mr. FOSTER. That is the end of the first sentence.

Mr. BIRD. To enforce them in the way that the law provides that they shall be enforced, which shall be through the Interstate Commerce Commission.

Mr. CHANDLER. And through the district attorneys of the country rather than the Attorney General. In other words, that is a second objection to offering this evidence at all.

Mr. RALSTON. I take these words as meaning something.

Mr. FOSTER. Read that first sentence through, clear through, to the committee.

Mr. RALSTON. I don't think we can take it without rereading it all. "By the express provisions of the act of July 2"—

The CHAIRMAN (interposing). It has been read once, has it not?

Mr. RALSTON. Yes; and this says very emphatically it is his duty by proceedings in equity to prevent and restrain all violations of this act—the duty of the Attorney General.

The CHAIRMAN. Let me ask you: Isn't there ample remedy under existing law without an equity action?

Mr. RALSTON. No; if your honor please.

The CHAIRMAN. Isn't it a rule of law that if there is an adequate remedy you can not invoke equity? Now, here are two remedies. One is the penalty provided by the statutes and the other is the power of the inspectors to stop the use of the engines. Now, it seems to me that a court would readily hold that that was ample remedy.

Mr. RALSTON. I think if you will allow Mr. Stevenson——

The CHAIRMAN (interposing). Here is another thing, if you will pardon me: The very injunction suit complained of was probably the most effective and almost the only kind of remedy that could be invoked, because the trouble with these engines was no doubt due to the fact that they were being prevented by the strike from being repaired and kept in repair.

Mr. RALSTON. In other words, if he could kill the strike he would let the railroads out of the difficulty. We think that is the view he took.

The CHAIRMAN. Possibly.

Mr. RALSTON. We don't think that is a legal view.

The CHAIRMAN. That seems to me would be the effective remedy.

Mr. RALSTON. If he could reduce them to slavery, he could stop the strike.

The CHAIRMAN. Mr. Ralston, do you imagine that anybody—do you imagine that the Senate would listen to us for two minutes on the proposition that the Attorney General should be impeached because he

did not happen to take the specific kind of remedies that you think he ought to have taken?

Mr. RALSTON. He says himself he ought to have taken it.

The CHAIRMAN. No; he does not.

Mr. RALSTON. I will submit that to the Senate.

Mr. FOSTER. You did not finish the sentence.

Mr. BIRD. Mr. Chairman, I want to make the further objection that this shows that this information was not in the hands of the Attorney General until after these impeachment charges were preferred. .

The CHAIRMAN. That is the objection I made to them, because this is a month after the impeachment charges were made against him over in the House.

Mr. RALSTON. I assume that that objection is well founded. Will it get very far? The engineers and the firemen will at once be compelled to ask the impeachment of the Attorney General as of tomorrow, let us say, for this very reason.

Mr. FOSTER. That is not the problem we are considering, however.

Mr. HOWLAND. I want to inquire if Mr. Ralston represents the Brotherhood of Locomotive Engineers and the enginemen and trainmen—is authorized to make that statement?

Mr. RALSTON. I do not, of course.

Mr. HOWLAND. Then I ask that it be stricken from the record.

Mr. RALSTON. Well, you seem to be worrying about the record a great deal. If it is not the locomotive engineers, it will be somebody else.

Mr. HOWLAND. You are worrying about the record and are filling it up with a lot of incompetent and irrelevant matter.

Mr. CHANDLER. Let us ask the chairman to sustain his own objection.

Mr. GOODYKOONTZ. Mr. Ralston, I want to say that the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen have demonstrated the fact that they are highly patriotic people, and nothing would I do, in any way, to prevent the enforcement of the laws that have been provided for their safety. The inspection and safety laws should be enforced to the very letter and the guilty—if there be such—severely punished.

May I observe, Mr. Ralston, that you are a distinguished lawyer. You are appearing before the lawyers' committee of the House. The impeachment charges that we are considering were made in the House of Representatives on the 11th day of September. It appears that counsel for the brotherhoods brought matters to the attention of our President and to the Attorney General on October 11. Do you express the opinion, as a lawyer, that this evidence is competent to be heard by this tribunal?

Mr. RALSTON. I do not say so because I am afraid of your finger, Mr. Goodykoontz, because I am not——

Mr. GOODYKOONTZ (interposing). I am your friend. I used to be your counsel; you recall that.

Mr. RALSTON. I stated that, technically, I thought the objection was well founded; but I said I thought you would not get very far if you insisted upon it.

Mr. GOODYKOONTZ. Suppose you withdraw it.

The CHAIRMAN. The objection is sustained.

Mr. HOWLAND. Mr. Chairman, on behalf of the Attorney General, I most respectfully ask that this evidence be received and that Mr. Stevenson be allowed to explain the efforts that have been made on behalf of and by the Attorney General in order to enforce the safety appliance laws, and the reception and the attention and the courtesy which he has received from the Attorney General ever since he has had this matter up. I would like to ask him three or four questions along that line.

Mr. RALSTON. I have not finished, as far as I am concerned.

Mr. HOWLAND. I thought you were through.

Mr. RALSTON. Not so long as the chairman is willing to permit me to question Mr. Stevenson.

The CHAIRMAN. Well, we have got to keep somewhat inside of the limits. Of course, we are not trying to be very strict. I think you will agree in that.

Mr. RALSTON. What I am desirous of doing is to proceed with the examination of Mr. Stevenson.

Mr. BOIES. Is that limit the 3-mile limit? [Laughter.]

Mr. YATES. I want to add my protest to this continual levity. This may be a very laughable affair; it may be a very ridiculous and entertaining affair, this idea of prosecuting the chief law officer of the United States, discrediting him and the whole administration of the laws of the United States from ocean to ocean; but it does not strike me that way. If this thing is carried out, it means that we will knock at the door of the Senate and present our case there, and managers will have to be selected by the House and the Senate will expect us to appear with a case; and I want to protest against carrying on this meeting like a town meeting. I think it is the most shocking thing that I have ever seen in America—an audience of people laughing and joking over this kind of a procedure. My opinion is only the opinion of one man and may not mean anything to you; but, so far as I can, if this thing comes to the House, I shall see to it that the people of this country know the gravity of this thing seems to have utterly escaped counsel, and the witness before this one—not Mr. Stevenson, but the one before this—and I am going to object, as usual, from now on. This is not a vaudeville entertainment; it is seeking to impeach the chief law officer of the American Government of high crimes and misdemeanors.

Mr. FOSTER. I never was on the bench, Mr. Chairman, but I rather enjoy some of the levity and I think we are getting along fairly well.

Mr. YATES. I disagree with you.

Mr. FOSTER. Perhaps we might have a little more dignity, but I think as we are proceeding we are getting along all right.

Mr. YATES. I disagree with you.

Mr. BIRD. Mr. Chairman, in view of the fact that H. R. 425, under which we are working and having hearings, is dated September 11, 1922, and prior to the time that has been referred to at which attention was brought to the Attorney General, as testified by this witness, I renew my objection to this testimony, regardless of all of the facts adduced.

The CHAIRMAN. Objection sustained.

Mr. RALSTON. Mr. Chairman, there is one objection I have to make with regard to that. The testimony so far developed—

Mr. HERSEY (interposing). Now, Mr. Chairman, objection has been sustained and I understand the charge withdrawn to No. 4?

The CHAIRMAN. It was sustained to the offer of this letter or statement offered by Mr. Stevenson. Of course, it has not been sustained generally as to all of the evidence under this specification. Personally, I do not think there is anything left in the specification, because I do not think there is any possibility of ever making anything out of it. I do not think you have any law, Mr. Ralston, under which you can hold the Attorney General liable.

Mr. HERSEY. Mr. Stevenson's testimony is upon this very point?

The CHAIRMAN. It is upon one phase of it.

Mr. CHANDLER. May I suggest that this objection here was intended to subserve some purpose—probably to protect the Attorney General. And now when both the representative of the Attorney General and the representative for the prosecution desire testimony, would it not be well to withdraw the objection and let it in? We are not here to enforce rigid rules of law.

Mr. BIRD. I call my colleague's attention, though, regardless of what this hearing may adduce, that it won't be competent on this resolution and never will.

Mr. CHANDLER. It will be competent if both sides agree to it.

Mr. BIRD. No; it won't, and it puts the committee in a false light.

Mr. CHANDLER. You can at least admit it, if they both agree to it.

Mr. RALSTON. Mr. Chairman, there is another consideration about it which has not been touched upon, which I think should not escape the committee's attention. The Attorney General proceeded as he did, as he claims to do, to enforce safety conditions in the railroads in one respect, because of the condition which prevailed on the 1st day of September, 10 days before the presentation of Mr. Kellar's resolution.

Now, then, the initiation of the offense does not depend upon our proving a notice to the Attorney General of that which he said it was his duty to do anyway. If he could proceed against labor organizations to maintain the interstate commerce acts of the United States, on September 1, he was in serious default in not proceeding on that date, and anything that happened after that date is merely cumulative of that phase.

The CHAIRMAN. Just think for a moment, Mr. Ralston: Suppose you proved there had been a violation of law somewhere, just as an illustration, I will give the violation of the prohibition law, for instance, one said to be commonly violated. Do you mean to say you could impeach the Attorney General because he does not happen to be able to enforce that promptly?

Mr. RALSTON. Oh, no.

The CHAIRMAN. Is not that the situation here?

Mr. RALSTON. No.

The CHAIRMAN. There was a strike that prevented the very thing you have complained of.

Mr. RALSTON. No; I beg your pardon—

The CHAIRMAN. What happened 10 or 15 days prior to the 15th day of September?

Mr. RALSTON. I beg your pardon. We are complaining of the defective conditions that existed from the 1st day of July.



The CHAIRMAN. July—your strike continued all along during that time—July, August, and September?

Mr. RALSTON. Yes, sir.

The CHAIRMAN. Just about two months; and during that time the strike was on and you were unable to enforce the law. And now it seems to me you would not have the cheek—pardon me for using that expression—or the nerve to go before the Senate and ask an impeachment on any such thing as that?

Mr. RALSTON. I do not know whether “nerve” is better than “cheek” or not.

The CHAIRMAN. Possibly not.

Mr. RALSTON. I make that observation with hesitancy in the presence of the governor; but I say “that which is sauce for the goose is sauce for the gander,” and if 60 days can go by unobserved—

The CHAIRMAN. But assuming, for the sake of argument, that all sorts of laws are being violated, you could not impeach him unless you could show that he had knowingly or intentionally omitted or refused to enforce the law in some fashion. The fact that he might neglect or the fact that he might be incompetent, for instance, would not be ground for impeachment.

Mr. RALSTON. Oh, no.

The CHAIRMAN. Then all you will show by this is the fact that there was a failure to enforce it; and here is a fact that is well known, that there was a strike that made it impossible to enforce it.

Mr. RALSTON. But the failure to enforce it may be as damnable, if you please, as anything else. In this case it has cost lives, as we believe we will show if we can proceed.

The CHAIRMAN. That may be true; but you could not impeach him because he was not able to do it.

Mr. RALSTON. We can impeach him for not carrying out the law.

The CHAIRMAN. No; you can not; you can impeach him for some intentional wrong. The fact that he is unable or that he is even careless would not necessarily mean that you can impeach him.

Mr. RALSTON. But there is such a thing as being vicious.

The CHAIRMAN. You have not offered to prove that; you have not alleged anything vicious.

Mr. RALSTON. Is it not an unequal administration of the laws?

The CHAIRMAN. Oh, well, there is always an uneven administration of the laws; but you never impeach a man for such a thing as that, unless you show there is an intentional wrong.

Mr. RALSTON. That matter we can argue when the evidence is in.

The CHAIRMAN. The question is whether we shall sit here and listen to all this testimony that we know never could impeach anyone. That is my view; and if the committee takes the same view of it, it seems to me we ought to shut off some of this. We have 100 charges, I think, in this bill; and if we are going to thresh out all those with all sorts of hearsay testimony, we will never get to the end of it.

Mr. RALSTON. Mr. Chairman, you have taken just the opposite position a number of times in this hearing.

The CHAIRMAN. Yes; I have been very lenient and allowed you to introduce all sorts of testimony—

Mr. RALSTON. I am discussing for the present the question of impe

The CHAIRMAN (continuing). I admitted it because it was testimony of a character that I thought might appear to be prejudicial to the Attorney General. Now, here is a square-toed issue. I believe the American public is willing to have the facts laid before them as they have been so we may pass upon the question whether or not there is an impeachable offense. You have enough of the facts in now to give us an idea of this charge.

Mr. RALSTON. The facts have not yet been laid before you. I am trying to do that by the testimony of Mr. Stevenson, showing an utter neglect to attempt to enforce the laws.

The CHAIRMAN. You have shown by Mr. McChord, chairman of the Interstate Commerce Commission, clearly that it is not the duty of the Attorney General but the duty of the district attorneys and the Interstate Commerce Commission to enforce that law.

Mr. RALSTON. That is not, as I say, what the Attorney General himself says.

The CHAIRMAN. That is what the law says; there is no question about it. You have not pointed to any other law.

Mr. JEFFERIS. Inasmuch as they have gone to the extent of showing that they called on the President—that is, these brotherhoods—on the 11th of October, 1922, and that the President arranged a meeting with the Attorney General, it seems to me there is enough in the evidence as would warrant going further with it in order that counsel, Mr. Howland, would be permitted to show what was done even after they brought this to the attention of the Attorney General October 11.

Mr. RALSTON. I wish to show that.

Mr. CHANDLER. I think that the Attorney General's representatives would want that brought out.

The CHAIRMAN. But are we following that with the same question?

Mr. BIRD. Mr. Chairman, I raise the question as to whether or not this committee can consider these matters after this date without the permission of the House.

Mr. MICHENER. We can consider anything we want to.

Mr. FOSTER. We can consider anything that we want to and listen to anything that we want to, I think.

Mr. CHANDLER. This committee can admit whatever it sees fit.

The CHAIRMAN. Yes; that is true, but it has usually been the practice in cases of this kind to follow the rules of evidence in whatever is admitted.

Mr. CHANDLER. When the interest of some individual is to be protected I think that it is well, and that we should follow the rules of evidence; but when some light can be thrown on a question such as this, and when both sides desire it, then I do not see why we should not proceed.

Mr. THOMAS. Mr. Chairman, I think that we would get along a good deal better if there were not so many speeches made by the members of the committee.

Mr. HOWLAND. Might I be permitted to ask the witness a question, in view of the fact that he has testified that certain matters were brought to the attention of the Attorney General?

Mr. RALSTON. If I am to be stopped in my examination, then I object to any cross-examination.

Mr. HOWLAND. You have put in some testimony.

Mr. RALSTON. No; I have not finished. I have not been permitted to proceed.

Mr. HERSEY. I move, Mr. Chairman, that we proceed with this matter.

The CHAIRMAN. All those in favor of that will hold up their hands.

Mr. MICHENER. Proceeding with what, with this witness?

Mr. HERSEY. Go on and let them submit the evidence.

The CHAIRMAN. You may go on.

Mr. RALSTON. Mr. Stevenson, I think I was asking you some time ago what happened on October the 11th, when you visited the Attorney General.

Mr. STEVENSON. We gave him a copy of the same letter—to the Attorney General—that we gave to the President, which outlined our difficulties at that time, which included a copy of that list of complaints.

Mr. RALSTON. Have you that letter?

Mr. STEVENSON. Yes; I have my file copy of it.

Mr. RALSTON. Can you give me a copy of that letter?

Mr. STEVENSON. I only have my file, but I would not like to be deprived of it.

Mr. RALSTON. With the permission of the committee, I will read it into the record, so that you may preserve the file.

OCTOBER 10, 1922.

To the PRESIDENT,

*White House, Washington, D. C.*

SIR: In the interest of the general public welfare, the safety of the traveling public, and the safety of the train-service employees we have been instructed by W. S. Stone, grand chief engineer of the Brotherhood of Locomotive Engineers, and D. B. Robertson, president of the Brotherhood of Locomotive Firemen and Enginemen, to bring to your attention certain conditions existing on many of the railroads throughout the United States which are a source of constant danger to the lives and limbs of the traveling public and the train-service employees and a constant menace to industrial peace, so sorely needed at this time, and to respectfully urge upon you the necessity of immediate action to remedy these conditions, viz, the failure of these railroads to observe and comply with the provisions of the acts to promote the safety of employees and travelers upon railroads by compelling common carriers in interstate commerce to equip their locomotives with safe and suitable boilers and appurtenances thereto, and acts amendatory thereof, and other safety statutes.

On August 29, 1922, the Interstate Commerce Commission reported to the Senate of the United States on the subject of "inspection of locomotive boilers" in answer to Senate Resolution 327.

This report states that the locomotive boiler inspection act, approved February 17, 1911, makes it "unlawful to use any locomotive engine propelled by steam power in moving interstate or foreign commerce unless the boiler of such locomotive and appurtenances thereof are in proper condition and safe to operate without unnecessary peril to life and limb."

The act provides that all boilers shall be inspected from time to time in accordance with the provisions thereof, and be able to withstand such test or tests as may be prescribed in the rules and regulations provided therefor.

By act approved March 4, 1915, the original act has been made to apply to and include the entire locomotive and tender and all parts and appurtenances thereof.

The report continues——

Mr. JEFFERIS. The letter continues?

Mr. RALSTON. The report is in the letter here. [Reading:]

The report continues: Instances have been brought to our attention where, in our opinion, the act as amended, referred to in Resolution 327, recently has been violated.

The reports from our inspectors indicate a very general let down in the matter of inspection by the carriers, which gives cause for concern. The carriers report various reasons for not making these inspections. Some of the reasons assigned are as follows:

"No monthly inspection made of this engine, account of not having competent inspectors in the service, due to walkout of shopcraft."

"Unable to make inspection, account insufficient help, due to strike."

"No inspection, account strike."

"Unable to make inspections or tests, account strike conditions."

The report then summarizes the work of the Government inspectors during the month of July and states it is typical. During that month 717 separate inspections, covering 4,085 locomotives, were made. Of these, 2,456 disclosed defects of varied characters more or less serious; 169 were found to be in such condition that they were not "safe to operate," and notices were served upon the carriers requiring them to be withdrawn from service. Of the others, 992 were found to have defects less serious in character but in need of prompt attention. In 1,295 cases defects, though not such as to give cause for immediate concern, were such as in accordance with sound practice should have attention.

In your address of August 18, delivered at the joint meeting of the two Houses of Congress, after detailing conditions in connection with the strike of the federated shopcraft, you are reported in the Congressional Record of Friday, August 18, to have said:

"Under these conditions of hindrance and intimidation, there has been such a lack of care of motive power that the deterioration of locomotives and the noncompliance with the safety requirements of the law are threatening the breakdown of transportation."

And further:

"It is not my thought to ask Congress to deal with these fundamental problems at this time. No hasty action would contribute to the solution of the present critical situation. There is existing law by which to settle the prevailing disputes. There are statutes forbidding conspiracy to hinder interstate commerce. There are laws to assure the highest possible safety in railway service. It is my purpose to invoke these laws, civil and criminal, against all offenders alike."

In the bill of complaint filed on behalf of the United States of America by the Attorney General in equity 2943 in the United States District Court for the Northern District of Illinois, Eastern Division, on pages 36 and 37, it is stated:

"Furthermore, it is the duty of the Attorney General of the United States to see that all laws of the United States are enforced which are for the protection of the public, and this applies with special force to those laws and rights of parties fixed by governmental bodies which can not be enforced or are difficult of enforcement by action brought by private citizens. Such power is vested in the Attorney General by the direct and implied provisions contained in the statutes creating and defining the duties of his office and of the Department of Justice. All power relating to the regulation of interstate and foreign commerce is vested by the Constitution in the Congress of the United States, and it is especially the duty of the Attorney General to see that such provisions of the Constitution and all congressional legislation based thereon be enforced, and that all findings and orders of bodies created by Congress for the purpose of preserving the free and unhampered flow of interstate and foreign commerce be observed."

On September 13, 1922, you transmitted to the House of Representatives. Sixty-seventh Congress, second session, with your concurrence, a supplementary estimate of appropriation for the Interstate Commerce Commission, which was

to make provision for 35 additional inspectors for the enforcement of the provisions of the boiler inspection act during the existing railroad situation.

This communication was sent to the House of Representatives subsequent to your correspondence with the chairman of the Interstate Commerce Commission and after the same had been approved by the Interstate Commerce Commission, the Interstate Commerce Committee, and the Treasury Department, but Congress failed to pass the same.

In its annual reports to the Interstate Commerce Commission, the bureau of locomotive inspection has advised the inability of the bureau to make adequate inspection on account of too few inspectors, pointing out that since the passage of the act providing for boiler inspection, the number of locomotives has increased about 11 per cent, but no additional inspectors have been provided.

Prior to the recommendation for the provision of 35 additional inspectors at the last session of Congress, a partial compilation of thousands of failures to comply with the locomotive inspection laws of 10 of the leading railroads was submitted to the Interstate Commerce Commission, and in order that you may be advised of the extent of these failures we attach hereto a copy of that report.

As a result of these failures, many serious accidents causing personal injuries and great property damage have resulted. For example:

1. Pennsylvania lines, west: On August 23, 1922, Engineer Davis, Fireman Jenkins, and Brakeman Nisbrugge were scalded and injured when crown sheet on engine No. 8820 dropped. Before starting the trip this engine was reported by the crew to be in a defective condition; but, notwithstanding the report, Roundhouse Foreman Moody pronounced it safe and ordered the crew to take it out. This accident occurred about 1 mile east of Hagerstown.

2. Baltimore & Ohio: On September 11, 1922, Engineer O. A. Huffman and Fireman H. D. Evans were injured jumping from cab of Baltimore & Ohio engine No. 2218, at Willard, Ohio, when steam pipe to left injector blew off.

An investigation of this accident, conducted by public utilities commission of Ohio, developed the fact that the failed part (connecting collar) had been repaired by incompetent workmen who used hammer and chisel to tighten same instead of a spanner wrench, causing same to spread and pull off.

3. Lehigh Valley: On August 24 Engineer Ormsby died by reason of the drifting valve bonnet blowing off locomotive No. 4000. This accident was caused by an attempt at needed repairs by incompetent workmen, which needed repairs had been reported two days previously by the deceased engineer.

In view of the continuing action of many of the railroads of the United States engaged in interstate commerce in openly and flagrantly violating the above safety statutes, causing danger and peril to life and limb of the employees and traveling public, and great unrest among the train-service employees on account of the added danger, we respectfully and earnestly appeal to you to call upon the Attorney General to take the necessary legal steps to immediately enjoin these railroads from using or offering to use locomotives and equipment which have not been inspected and found to comply with the requirements of the safety statutes and the regulations that have been promulgated thereunder. In this connection we beg to say that the Brotherhood of Locomotive Engineers and the Brotherhood of Locomotive Firemen and Enginemen are prepared to cooperate with the Attorney General and the Department of Justice to the fullest extent, and will gladly furnish them with such assistance and information at hand in their files when called upon.

Considering the urgency of the question and the continuing danger to which the public and the employees are subjected, we ask the favor of an early reply.

And that is signed and submitted by the attorney for the Brotherhood of Locomotive Engineers and the attorney for the Brotherhood of Locomotive Firemen and Enginemen.

Mr. YATES. That was signed by you for the engineers?

Mr. STEVENSON. Oscar J. Horn for the engineers and myself for the firemen and enginemen.



Mr. RALSTON. Have you completely stated what happened in your interview with the Attorney General on October 11?

Mr. STEVENSON. I have not said what happened. When we submitted the matter to him he expressed great concern with the conditions. He intimated that he was more or less familiar with conditions and said that if anything could be done it should be done. We had rather an extended discussion of law; and if I may be pardoned for differing with the gentleman, I hope you will not preclude us from an action at law by deciding that we have none, because we think we have by injunctive process; we discussed it at quite considerable length.

The CHAIRMAN. Do you mean to say that he expressed the opinion that an injunction would not lie; is that it?

Mr. STEVENSON. Well, he did not express that opinion, he not having had an opportunity to examine the books; he raised the question, "Would an injunction lie?" and we had gone to work and had examined the law to some extent, and we felt an injunction would lie.

Mr. HERSEY. An injunction to stop them from using defective locomotives; is that it?

Mr. STEVENSON. We think that, since the law says that it is unlawful to use a locomotive unless it complies to the standards, that, on behalf of our members, an injunction will lie against the railroads to restrain them from offering to us men locomotives that have not been inspected and found to comply with the safety statutes.

Mr. HERSEY. You mean that these locomotives that you wanted to enjoin them from using were locomotives that had not been inspected——

Mr. STEVENSON. And found to comply with the requirements of the Interstate Commerce Commission.

Mr. HERSEY. And they had not been inspected because of the strike; is that it?

Mr. STEVENSON. I must say that we could not consider the reason why they were not inspected.

Mr. HERSEY. What was the reason that brought about the want of inspection or this use of defective locomotives? Was it not due to the strike?

Mr. STEVENSON. That is rather a large subject, sir; if you wish me to go into it and give some personal opinion, I can do so.

Mr. HERSEY. I am asking for your opinion. If the strike had not come on and there had been no strike, you would not have had any complaint, would you?

Mr. STEVENSON. From the viewpoint of a lot of people—not expressing myself; but the cause of it, the primary cause, was the direct intention of certain railroads to break up certain labor organizations.

Mr. HERSEY. Never mind about that. I am asking your opinion—if there had been no strike and the shopmen had continued at work and had not struck, you would have had no complaints to make to the Attorney General at present, would you?

Mr. STEVENSON. Probably not, sir.

Mr. CHANDLER. Did not the chairman of the commission state that for the last month the inspectors of the commission had reported

practically no violation of the law, and that since the strike ended everything has been moving smoothly?

Mr. STEVENSON. I do not think he would have testified to that if he had seen their reports.

Mr. HERSEY. Have the same conditions continued as to the want of proper locomotives since that time?

Mr. STEVENSON. They have.

Mr. HERSEY. Have the injunction proceedings cured your complaint?

Mr. STEVENSON. No, sir.

Mr. HERSEY. Has it helped to any extent?

Mr. STEVENSON. Not that we could recognize.

Mr. MONTAGUE. These engines would have been inspected if you had reported them?

Mr. STEVENSON. Yes, sir.

Mr. MONTAGUE. How could you force the people to have them inspected except by injunction process?

Mr. STEVENSON. I know of no way.

Mr. RALSTON. You could have prevented their use, could you not?

Mr. STEVENSON. I think so. The same question was asked us in the discussion of this case, and our answer was, Can the railroads refuse to repair their locomotives and the Government lie inactive? Is the Government of the United States helpless?

Mr. HERSEY. Well, if the Interstate Commerce Commission whose duty is to inspect them, and whose duty is to enforce the penalties in the first instance, either by itself or by a district attorney—if there has not been proper inspection, why, it is due to their not having sufficient inspectors, or their not having performed their duty; or it is due to the orders of the inspectors to remove defective equipment from the roads, and the railroads failing to comply with that order. Therefore, they were liable to the penalties to be enforced, through the Interstate Commerce Commission and the district attorneys, and not through action by the Attorney General. Is that not true?

Mr. STEVENSON. I think that is one remedy, sir; I do not think it is the only remedy.

Mr. HERSEY. That is one remedy, is it not? That is the remedy provided by law, is it not?

Mr. STEVENSON. I think so; that point has not been raised.

Mr. HERSEY. That is the remedy provided by statute, is it not?

Mr. STEVENSON. That is one remedy provided by statute.

Mr. HERSEY. And it is the only remedy provided by statute.

Mr. BOIES. But is it adequate, under the circumstances?

Mr. STEVENSON. That is the point, sir. We are not trying to do a vain thing. We are having scores of men very seriously injured, and numbers of them killed, some of them by reason of being compelled to take out locomotives of which they complained before they took them out.

Mr. HERSEY. You were making a complaint to the Attorney General and the President of a situation brought about by yourself?

Mr. GOODYKOONTZ. No.

Mr. FOSTER. That is the very thing they debate; they say it is brought about by the railroads.

Mr. STEVENSON. You must be mistaken in saying we brought it about, sir; we were not interested in the strike in any way.

Mr. HERSEY. I am speaking of the ones that are prosecuting these charges—the American Federation of Labor.

Mr. STEVENSON. We are not members of the American Federation of Labor.

Mr. HERSEY. Well, the striking railroad employees; it was brought about by them, was it not? The condition was brought about by the striking employees?

Mr. FOSTER. Well, that is the whole point; they say they had to strike by reason of the conditions. We are not getting anywhere on that. Mr. Stevenson is not going to say the defective engines were caused entirely by the strike; he goes a step further and says what caused the strike.

Mr. STEVENSON. I say that is the standpoint——

Mr. HERSEY (interposing). Was it the defective locomotives that caused the strike?

Mr. STEVENSON. No, sir.

Mr. HERSEY. What was it?

Mr. STEVENSON. The men going on strike?

Mr. HERSEY. Yes; what caused it?

Mr. STEVENSON. The attempt of the railroads to nullify the transportation act of 1920, and their deliberate undertaking to break certain labor organizations.

Mr. HERSEY. Then it was not defective locomotives?

Mr. STEVENSON. No, sir.

Mr. CHANDLER. When did you have this conversation with the Attorney General in regard to obtaining an injunctive process?

Mr. STEVENSON. On the afternoon of October 11.

Mr. CHANDLER. October 11?

Mr. STEVENSON. Yes, sir.

Mr. CHANDLER. Now, there has been testimony here by the chairman of the Interstate Commerce Commission that there has been no complaint during that time; in other words, there has been an attempt to reform and rectify the evils; and you know that you can not secure an injunction when there has been a correction of the very things that the injunction attempts to restrain?

Mr. STEVENSON. Well, sir, we differ very gravely on the facts. If the chairman of the Interstate Commerce Commission testified that there was a good faith attempt being made on certain railroads that we can name to perform their duty under the statute, we differ gravely on the facts.

Mr. FOSTER. I think, in justice to Mr. McChord, that he testified, as I remember, that the peak was reached in September, when 72 per cent were defective; then the next month it dropped to 71, and then the next month to 70.

Mr. GOODYKOONTZ. As I remember the testimony, the chairman of the commission said that they were inaugurating prosecutions against certain roads that persisted in defying this safety appliance law. I did not understand him to say that there were no violations.

Mr. JEFFERIS. They took that up with the district attorneys on November 23.

Mr. BOIES. I would like to hear what transpired between these gentlemen and the Attorney General.

Mr. RALSTON. I am not objecting to any of these questions, and I have no right to do so. But would not this matter be facilitated if the witness went on in an orderly manner; and if questions were, as far as possible, reserved to the end?

Mr. STEVENSON. The Attorney General discussed with us the law; and he said it was a matter that would need some careful consideration. And we agreed with him. Mr. Esterline, one of the assistants to the Solicitor General, was at that time in Chicago, on some hearing in the injunction matter in Chicago; and Mr. Daugherty intimated that he would like to have him look into the matter.

The CHAIRMAN. You recognize, however, that it is a matter of serious doubt as to whether they were guilty?

Mr. STEVENSON. It was a matter for investigation; yes, sir.

Mr. HERSEY. Do you not agree that no injunction would have laid against the railroads up to that time for what they had done in the past? It would lie against them only for acts to take place in the future, would it not? Are you a lawyer?

Mr. STEVENSON. Yes, sir.

Mr. HERSEY. Well, do you not understand that that is the law? Do you dispute that as a question of law—that no injunction proceeding would punish them for what took place in the past, but that it would only apply to future proceedings?

Mr. STEVENSON. That is true, sir.

Mr. FOSTER. Well, they wanted a mandatory injunction to have the equipment inspected before it went out, did they not?

Mr. STEVENSON. Yes, sir.

Mr. GOODYKOONTZ. It is a mandatory proceeding; they want an injunction process to stop that practice?

Mr. STEVENSON. Yes, sir.

Mr. SUMNERS. Mr. Chairman, I think the witness should be allowed to go on with his testimony.

The CHAIRMAN. Yes, I think we should let him go on and finish.

Mr. STEVENSON. I will try to make it as brief as I can. The Attorney General tried to get Mr. Esterline at once. He also sent a telegram, and as I recall it he wrote him a special delivery letter while we were in the office. Before we left town that evening, he had talked to Mr. Easterline on the telephone, and arranged with him to meet us at his earliest convenience, either in Washington, Chicago, or Cleveland; we would meet him anywhere. And as a result, Mr. Esterline spent the day with us on October 14. That was the Saturday following the Wednesday of our interview here—in Cleveland, discussing the law in this case.

Mr. RALSTON. What next happened, in the order of time?

Mr. STEVENSON. Mr. Esterline, of course, did not commit himself in any way; he said he would return to Washington at once and report to the Attorney General, which he did, I take it.

Mr. RALSTON. What next step did you take, Mr. Stevenson?

Mr. STEVENSON. We wrote the Attorney General a week later, on October 21, not having heard from him, and asked if there had been any progress, or if he wished to see us.

Mr. RALSTON. Have you that letter here?

Mr. STEVENSON. I have [handing letter to Mr. Ralston].

Mr. RALSTON. May I read this into the record? [Reading:]

October 21, 1922. Hon. Harry M. Daugherty, Attorney General of the United States, Washington, D. C. Sir.

The CHAIRMAN. What is that you are reading from?

Mr. RALSTON. This is a letter from Mr. Horn and yourself, I take it?

Mr. STEVENSON. Yes; all of these letters were written jointly.

The CHAIRMAN. What date is that?

Mr. RALSTON. October 21. "Hon. Harry M. Daugherty"—

The CHAIRMAN (interposing). Why not insert it in the record instead of reading it?

Mr. RALSTON. Except that it seems to me that, perhaps, it brings the thing more home, and gives the committee a chance to examine it at the moment, with regard to the contents.

Mr. CHANDLER. We can examine it better when we read it in our offices.

Mr. RALSTON. But you would not have the witness there to follow it up.

Mr. FOSTER. You could have it read while you are asking questions.

Mr. YATES. Read it.

Mr. RALSTON (reading):

On October 11 Mr. Stevenson and myself called at your office at the request of President Harding and discussed with you the necessity of bringing an action against the railroads of the country to restrain them from violation of the safety statutes. You will remember that Mr. Stevenson represented the Brotherhood of Locomotive Firemen and Enginemen and that I represented the Brotherhood of Locomotive Engineers, and it was at their insistence that the matter was called to the attention of the Government.

As an immediate result of that conference Mr. Esterline, at your suggestion, spent Saturday, the 14th instant, in Cleveland with us, and we went over this matter in great detail.

Reports that are coming in to the brotherhood indicate that while the conditions are improving on some railroads, no improvement has taken place on others but, as a matter of fact, the conditions are getting worse. Only the more serious accidents which result in injury and death to the members of these organizations find their way into the public prints, and many catastrophes have been narrowly averted as a result of the violations of the safety statute, although in almost every instance there is injury or death to the engineer or fireman.

Not having heard from you, we respectfully beg to call this matter again to your attention and ask that you will advise us by return mail, if possible, whether it is the intention of the Government, through the Department of Justice, to take action in this regard.

Respectfully yours.

Did you get any reply to that letter?

Mr. STEVENSON. No, sir.

Mr. RALSTON. The date of that was what?

Mr. STEVENSON. That is October 21.

Mr. RALSTON. Not having any reply, what next step did you take?

Mr. STEVENSON. On the 24th we sent a telegram.

Mr. RALSTON. Have you that?

Mr. STEVENSON. Yes, sir [handing paper to Mr. Ralston].



Mr. RALSTON (reading) :

HON. HARRY M. DAUGHERTY,

*Attorney General, Department of Justice, Washington, D. C.*

On October 10, we called on the President and yourself with reference to violations of safety statutes and regulations by the railroads, conferred October 14 with a member of your department, and wrote you October 21. Will you kindly wire answer, if there is anything further we can do, and if any action is contemplated by your department.

OSCAR J. HORN,

*Attorney, Brotherhood of Locomotive Engineers.*

THOMAS STEVENSON,

*Attorney, Brotherhood Locomotive Firemen and Enginemen.*

That is dated October 24, 1922. Did you have any answer to that telegram?

Mr. STEVENSON. Yes; I think the next is the Attorney General's telegram to us of October 30.

Mr. RALSTON. A week later, practically—six days later?

Mr. BOIES. Well, we can figure that.

Mr. STEVENSON. That was the first word we got from the Attorney General. We did get word on the 30th of October [handing paper to Mr. Ralston].

Mr. RALSTON (reading) :

WASHINGTON, D. C.

*October 30, 1922.*

HON. OSCAR J. HORN,

*1024 Engineers Building, Cleveland, Ohio.*

Will expect and be glad to see you and Mr. Stevenson here Wednesday morning, November 1, at 9.30.

H. M. DAUGHERTY,

*Attorney General.*

What did you do in consequence of the reception of that telegram?

Mr. STEVENSON. We were here on the morning of November 1, Mr. Horn and myself.

Mr. RALSTON. Did you interview the Attorney General?

Mr. STEVENSON. We did.

Mr. RALSTON. State what happened at that interview?

The CHAIRMAN. All of these things are subsequent to the objection, are they not?

Mr. FOSTER. Yes; but the Attorney General's representative suggested that they go in.

The CHAIRMAN. Yes; I know; but the committee has some rights.

Mr. HERSEY. Let them go in.

The CHAIRMAN. Very well; but they have not any bearing upon the case at all.

Mr. HERSEY. I do not think we can keep it out now.

Mr. BOIES. Having gone this far, we can not very well stop until we reach the end.

Mr. STEVENSON. We had an interview with the Attorney General, Mr. Crim, Mr. Esterline—Mr. Horn and myself.

Mr. RALSTON. Mr. Crim is an assistant attorney general, is he not?

Mr. STEVENSON. He is connected with the department; I do not know in what capacity. At that time we had some discussion of the law, and it was suggested then that this matter of the enforcement of this law rested in the Interstate Commerce Commission.

Mr. HERSEY. Did you assent to that? Who said that?

Mr. STEVENSON. That was the suggestion from the Attorney General's side of the argument; I do not know just who exactly.

Mr. HERSEY. Did you agree to it?

Mr. STEVENSON. No, sir; we differed and will differ as to that.

Mr. BIRD. Was that in the Attorney General's presence that that was said?

Mr. STEVENSON. Yes, sir.

Mr. BIRD. Did he put forth that statement?

Mr. STEVENSON. Yes, sir; the suggestion was general—was it not within the purview of the Interstate Commerce Commission to enforce the safety statutes? We said, emphatically, no; we had some law that sustained our position. Well, in any event we thought it was between the departments—departmental courtesy—that they should work together. And we agreed that perhaps that would be a mighty good thing. And Mr. Horn and myself undertook to enlist the aid of Chairman McChord, and we left about noon and found Chairman McChord; and his opinion at that time was that he had no authority whatever in a court of equity; the only authority he had was to collect penalties for violations—which was our view of it; that as far as a mandate or injunction was concerned he had no authority; that that was within the general equity powers of the Department of Justice, but that in any event, whichever way it went, he knew the conditions. He was just as anxious that the Attorney General or the President or anybody else should do anything that was possible to amend the conditions. And he turned us over to the bureau of locomotive inspection, with full instructions to that bureau to cooperate with us and with the Department of Justice in any way that was requested by the Department of Justice.

As a result of that, in the afternoon of that day we had another conference with the Attorney General. He gave us a good deal of his time; he told us he was very busy on some matters, and I think he was, because the newspapers were full of some things—liquor shipping. However, he gave us the time, and in the afternoon we went back there, with Mr. Hall, of the bureau of locomotive inspection, and part of his reports and a tabulation of the conditions of locomotive power. It was agreed all round—if I might say this and explain as to our position at the time with our clients:

The strike of the shopmen, or, rather, the injunction against the shopmen, either growing out of it or on account of evolution, there was a settlement in certain sections of the country, and no settlement in the others.

Mr. BIRD. So that where there was a settlement on the roads, and the men are going back where they made a settlement, those conditions on those roads are a great deal improved, and on the other roads where there was no settlement conditions are rapidly getting worse?

Mr. STEVENSON. On some of the roads it is amazing the extent to which their power has been depleted, and that violation by the roads is what we were calling their attention to. And we had no intention of requesting that there be a literal application of the inspection law. A reasonable application of the law is all that we requested, and was the only demand that we were making along that line.

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Mr. Hall recorded that afternoon to the Attorney General his own personal experience with regard to one particular locomotive on the Pennsylvania Railroad. He in person went and inspected a locomotive at Ashtabula. He found that the locomotive frame was broken, and ordered it out of service. The next notice that Mr. Hall had was that that engine two hours afterwards was in service; and he said, "Mr. Attorney General, you can not fix a broken frame of a locomotive in two hours. It can not be done." But that was the condition of the power on the Pennsylvania lines west at that time.

Mr. RALSTON. How long ago was that?

Mr. STEVENSON. That was on the afternoon of November 1, or close to that time, and it was after that time as nearly as I can tell. That was the time when Mr. Daugherty said, "Well, something must be done." I think it was at that time that a number of members of the department then began to get busy to find out whether or not we were bringing to the department information in proper order and proper credibility on which they could proceed. It was about that time.

Mr. JEFFERIS. I did not get that.

Mr. STEVENSON. As far as I can learn—I do not know of actual knowledge—but what transpired later, when we were at the department at that time, the Department of Justice began to put its agencies at work itself to investigate the information we were bringing in. They were beginning to go into the files in an effort to find out whether or not the conditions were such as we were describing them to be.

Mr. JEFFERIS. Well, was anything said this afternoon, November 1, that they would make any investigation?

Mr. STEVENSON. No.

Mr. JEFFERIS. But, as a matter of fact, they did?

Mr. STEVENSON. Well, on our next visit to Washington there was so much that had been done that we were satisfied that they must be carrying on an investigation. So much was taking place; and we found them over there camped in the Interstate Commerce Commission—found the members of the bureaus right in the bureau, with desks over there and several stenographers over there at work.

Mr. HERSEY. How long was that after this?

Mr. STEVENSON. Two weeks later.

Mr. HERSEY. Two weeks later you found them camped there?

Mr. STEVENSON. Yes. Now, the day following the 1st, I think the next day, I went over there with Mr. Horn. Mr. Esterline and I were over there. Mr. Esterline and I discussed the law. Mr. Esterline and I like to do that; but at that time I referred to him a certain case on which we felt that the department could rely absolutely as being ample law.

The CHAIRMAN. Can you give the number of it?

Mr. STEVENSON. Yes, sir [referring to a file of correspondence]. My progress may not be much, but we have done a lot of writing. The case is *The People of Porto Rico v. American Railway Company of Porto Rico*, 254 Federal, 369.

The CHAIRMAN. Is it a Federal case?

Mr. STEVENSON. Yes; 254 Federal.

The CHAIRMAN. Page 269?

Mr. STEVENSON. Page 369.

Mr. GOODYKOONTZ. Do they have the English equity practice in Porto Rico?

Mr. STEVENSON. Yes; it comes under the first circuit.

Mr. GOODYKOONTZ. Our system?

Mr. STEVENSON. In our circuit court, first district. You will find that decision in the first district. That is the case that we thought stood on all fours with the request we made of the department.

Mr. CHANDLER. In this connection, have you had any discussion with the Attorney General about whether or not it is a matter that should be first taken up by the Interstate Commerce Commission, and did he advise anything at the time that would give rise to a discussion about whether he had jurisdiction or not, or whether this case was applicable?

Mr. STEVENSON. No, no; this particular case had no reference whatever to that.

Mr. CHANDLER. Did he ever say anything to you in those conferences that you have had with him, in any talk, about the relative jurisdiction of the Attorney General's office and the Interstate Commerce Commission?

Mr. STEVENSON. The question was raised; yes, sir; the question was asked.

Mr. CHANDLER. What was the attitude, or what was his mind; did he state his opinion; did the Attorney General raise the question?

Mr. STEVENSON. The Attorney General just raised the question, Should not the initial steps be taken by the Interstate Commerce Commission?

Mr. CHANDLER. And you tried to show that this case was a parallel case, and you presented it for that purpose?

Mr. STEVENSON. Our answer to that question was that the Interstate Commerce Commission would have nothing to do with the action that we were seeking to have brought, after that time. The Interstate Commerce Commission has the power, under the act, to transmit information to the district attorney, who, acting under the Attorney General, can bring suit to collect penalties for violations. We were not interested in the collection of penalties for violations. We wanted the act enforced. We wanted protection. The collection of penalties does not bring our men back to life, our men are being killed and crippled, after they have protested against the continuance of locomotives in service without any inspection. Let us take a case. Suppose that the law says that they must be washed out every 30 days. Now, you know what the purpose of washing out is. Mud accumulates on the crown sheet, and if it is not washed out, the crown sheet burns and becomes weakened, and the boiler explodes.

Now, the presumption is that if that regulation is for safety it must be washed out every 30 days; then, if it is not washed out every 30 days, it is unsafe, and we want the railroads to be restrained from operating that locomotive unless it had been washed out, and we told him at the time that the Interstate Commerce Commission was not the one to have that done under the law.

Mr. MICHENER. Mr. Stevenson, here is a close legal question, in your mind and in the mind of the Attorney General, as to whether or not the equity courts should act.

Mr. STEVENSON. No, sir; there is none whatever in our mind. There never was any question in our mind.

Mr. MICHENER. I say there was in the mind of the Attorney General.

Mr. STEVENSON. I do not know whether it was or not. He simply raised this question. The question has never been raised seriously.

Mr. MICHENER. But, in view of the question that was to be decided, and you held numerous conferences on what the legal rights were. The attorney on one side, as often happens in a lawsuit, took one view of the situation, and the attorney on the other side took the other view of the situation, and now, because the Attorney General's view of the legal situation did not agree with your views as an attorney for the organizations, basing your views upon this one case, one legal case, in Porto Rico, it is your contention that the Attorney General for that reason should be impeached.

Mr. STEVENSON. Mine?

Mr. MICHENER. Yes.

Mr. STEVENSON. I do not know where you get that idea.

Mr. HICKEY. He did not say that. This man is not making any charges.

Mr. FOSTER. He is not taking the position that he is guilty. He is just a witness.

Mr. BOIES. Your idea was that the Interstate Commerce Commission was not clothed with sufficient power, under the circumstances, to go into a court of equity?

Mr. STEVENSON. It was.

Mr. BOIES. That the Interstate Commerce Commission was not?

Mr. STEVENSON. Yes, sir; that was our ground.

Mr. BOIES. That the Interstate Commerce Commission was not clothed with sufficient power, but that the Attorney General's office was?

Mr. STEVENSON. Yes.

Mr. MICHENER. I say that your contention is not——

Mr. STEVENSON (interposing). No, sir; not my contention.

Mr. MICHENER. Well, if your contention is not, then I want to be put right on this thing. Then, you do not contend that it would be an impeachable offense because the Attorney General did not use the injunctive power?

Mr. STEVENSON. I wish you would repeat that.

Mr. MICHENER. What I am trying to get at is this: Do you think that the Attorney General should have used the legal process, or an equity process, or both?

Mr. STEVENSON. Both.

Mr. MICHENER. But, it is your contention that the Attorney General is guilty if he did not consider the law for the penalty——

Mr. STEVENSON (interposing). I am not making any complaint against the Attorney General here.

Mr. MICHENER. Oh, well, I take it that you are appearing as a witness and that was the contention of Mr. Ralston here this afternoon, and you are undertaking, by your assistance, to sustain that contention, that is, Mr. Ralston's contention.



Mr. RALSTON. Mr. Stevenson, will you explain, please, to the committee, why, in detail your attitude that simply to sue for the penalty will be a failure.

Mr. JEFFERIS. That is not the question.

Mr. MICHENER. No.

Mr. JEFFERIS. As I understand, Mr. Stevenson is just a witness.

Mr. STEVENSON. I am here under subpoena.

Mr. JEFFERIS. Simply to relate facts.

Mr. STEVENSON. To relate facts.

Mr. FOSTER. And you do not take the position here, that that is an impeachable offense?

Mr. MICHENER. Mr. Ralston does, and Mr. Ralston is submitting this man as a witness to prove his contention.

Now, I think that Mr. Ralston will agree with me as to that proposition, and I am asking this witness himself if, as an attorney, who has given this matter careful thought and consideration, if he feels that there is such a ground here, assuming that everything he says is true. Now, I think you understand that.

Mr. RALSTON. I shall object to that question. You might as well ask the witness——

Mr. MICHENER (interposing). I will withdraw the question. I do not want to withdraw it from the record, but will not insist on an answer.

Mr. FOSTER. He has just simply found a good lawyer and wants to get some information.

Mr. HICKEY. Mr. Stevenson, have you any other cases besides this Porto Rico case?

Mr. STEVENSON. Yes; the State *v.* the Pacific Express, which is in the Supreme Court of Nebraska.

Mr. HICKEY. Has it been decided?

Mr. STEVENSON. I beg your pardon?

Mr. HICKEY. Has it been decided?

Mr. STEVENSON. Yes, sir; 115 Northwester, 619.

Mr. HERSEY. That is in a State court, not a Federal court?

Mr. STEVENSON. Federal court of Nebraska.

The CHAIRMAN. You mean State court?

Mr. STEVENSON. State court; yes, sir. It is a State case. There are any number of cases, under rate cases.

Mr. HERSEY. Your Porto Rico case is a rate case?

Mr. STEVENSON. Yes, sir.

Mr. HERSEY. How do you claim that a rate case could apply to this case?

Mr. STEVENSON. It is merely the principle, sir, as a legal proposition. That is the law as to the rate cases, which is so closely akin to the safety statute cases in its operation that we felt that it was on all fours, and we have not had it challenged yet by the department.

Mr. HERSEY. That was a rate case under the Porto Rico statute, wasn't it?

Mr. STEVENSON. Yes; and there are hundreds of them under the Elkins Act, any number of cases, and Judge Grosscup in one case

wrote quite an opinion on this proposition as to when a railroad was discriminating on the question of rates.

Mr. HERSEY. Now, we are wasting time.

Mr. STEVENSON. You asked me, sir.

Mr. HERSEY. I know, but can't you cite the cases upon which you depend?

Mr. STEVENSON. I did not come prepared to do that.

Mr. HERSEY. You have given us two cases, one a rate case, in a State court. Can't you do better than that?

Mr. STEVENSON. I did not come prepared. I will in the morning.

Mr. HERSEY. I wish you would.

Mr. STEVENSON. All right, I am not prepared to do it to-night.

Mr. BIRD. Mr. Stevenson, I would like to ask you a question. I fully realize the very serious conditions, and have a very high regard of the enginemen and the engineers. Was the phase of the matter discussed that if equitable relief, or an equitable injunction was gotten against the railroads, that it would have a tendency to paralyze traffic, to the detriment and suffering of the public?

Mr. STEVENSON. It was discussed, sir.

Mr. BIRD. What was said on that subject?

Mr. STEVENSON. We all wanted inspection, and have wanted it all times.

Mr. BIRD. No; I asked you what was said on that subject in conversation.

Mr. STEVENSON. We have had so many discussions. I can not say what was said.

Mr. BIRD. With the Attorney General?

Mr. STEVENSON. Oh, I thought you meant with our clients.

Mr. BIRD. No.

Mr. STEVENSON. Oh, that has been discussed with the Attorney General, and, as a matter of fact, the expediency of the measure we have proposed so far has been the only difficulty raised. The only specific difficulty raised was as to the possible effect at this time of a drastic enforcement of the safety statutes on transportation.

Mr. HERSEY. What in your opinion would have been the result if the Attorney General had proceeded in the courts and obtained injunctions granted by the courts, had asked for them according to your ideas, and obtained the injunctions against the railroads from time to time, what effect would that have had on the railroads of the country?

Mr. BIRD. In your opinion.

Mr. STEVENSON. This would all be indirect effect. It would have no direct effect.

Mr. HERSEY. Indirect effects. Would it have made conditions worse or better?

Mr. STEVENSON. No, sir; better.

Mr. HERSEY. How; were the railroads in a condition to make these repairs at that time?

Mr. STEVENSON. Our conferences have all arisen since the settlement of the strike. Our opportunities have arisen since the settlement of the strike.

Mr. HERSEY. Did they have men to do the work at that time?

Mr. STEVENSON. I beg your pardon?

Mr. HERSEY. Did they have men to do the work at that time; had the men come back to work?

Mr. STEVENSON. Why, certainly, some of them were at work. Some of them were not.

The CHAIRMAN. Then, your complaints are the result of things that have happened since the trouble started or all since September 11?

Mr. STEVENSON. I beg your pardon.

The CHAIRMAN. Your complaints are the result of things that have happened since the trouble started or since September 11, and all of your conferences have been since that time?

Mr. STEVENSON. All of our direct appeals to the Attorney General have been since the settlement of the strike.

The CHAIRMAN. And that has been since the 11th of September?

Mr. STEVENSON. Yes, sir.

Mr. RALSTON. What do you mean by the settlement of the strike, Mr. Stevenson?

Mr. STEVENSON. I should say since the institution of the injunction proceedings, subsequent or during the pendency of the partial settlement of the strike by the various railroads.

Mr. RALSTON. Now, your complaints are against those railroads that have settled and those that did not settle?

Mr. STEVENSON. On some of the railroads the conditions are worse to-day than they have ever been.

Mr. RALSTON. What railroads, for instance?

Mr. STEVENSON. Take the Missouri Pacific, the Texas Pacific, the Denver, Rio Grande & Western, the C. & E. I., are some of the roads on which——

Mr. BIRD (interposing). What is the cause of the condition existing now on those railroads?

Mr. STEVENSON. They have no competent mechanics for the purpose of making repairs on locomotives.

Mr. HERSEY. Why have they not competent mechanics?

Mr. STEVENSON. Because there is a difference of opinion between the railroads and the mechanics.

Mr. HERSEY. A strike, isn't it?

Mr. STEVENSON. No, sir; there is a lockout.

Mr. HERSEY. A lockout?

Mr. STEVENSON. Yes, sir. Let me explain. On some of these railroads the application that a man must sign—I do not know about these particular railroads I have named; I do not want to be sure about that—some of the railroads, and this is the policy of some of the railroads that have not settled, the application that a man must sign to get a job is an application for work, application for membership in a company-controlled labor organization, and authorization for the railroad to check off a certain number of months' dues in advance and a resignation in the event he should ever contemplate or ever does join another organization.

Mr. JEFFERIS. What road has done that?

Mr. STEVENSON. The Union Pacific is one.

Mr. JEFFERIS. There is no trouble on the Union Pacific, is there?

Mr. STEVENSON. I think there is. There are unsafe conditions on the Union Pacific.

Mr. BIRD. What would have been the effect of such injunctions as you are seeking to have obtained, in your judgment, had they been granted on such a road as you mention?

Mr. STEVENSON. There would have been a partial tie-up of some of the locomotives; that is, a partial tie-up of power.

Now, the situation, the inspection law, and the inspection results can not be clear to you gentlemen. The Government inspectors are not charged with the duty of inspecting all locomotives on the railroads. There are 70,000 locomotives and Mr. Chairman McChord only read 6,000 or 7,000 a month as being inspected. But the burden of making proper inspection is placed upon the railroads under the act under the supervision of these 50 Government inspectors. When complaints are made or, under certain conditions, the Government inspectors themselves will go and examine the locomotives, whereas generally their duties are supervisory to examine the reports that are made by inspectors on the various roads. You can appreciate the physical impossibility for 50 men to adequately inspect 70,000 locomotives on all the railroads in the United States.

Mr. BOIES. The House did authorize the appointment of 35 more.

Mr. STEVENSON. Yes; for supervision. Now, the Government inspectors only inspect locomotives that are being offered to the train-service men as ready for operation. They are supposed to be all right, and the defects that he read as the bureau of locomotive inspection reports were defects found in locomotives that were being offered to our men for operation. They are bad engines, those that would not turn a wheel on the sidetracks, but these locomotives, even the locomotives that were being ordered ready for service, are 50, 60, and 70 per cent defective, yet our men are running them on the railroads every day. We had three explosions on the Texas & Pacific of locomotives attached to passenger trains inside of three weeks.

Mr. HERSEY. That is due to the want of inspectors?

Mr. STEVENSON. Due to want of repair, proper upkeep, washouts, and everything else.

Mr. HERSEY. You claim, don't you, Mr. Stevenson, that there are not enough inspectors to inspect the roads?

Mr. STEVENSON. Primarily that is a failure of the railroad inspectors.

Mr. HERSEY. I am not speaking about the railroad inspectors; I am speaking about the Government inspectors under the Interstate Commerce Commission.

Mr. STEVENSON. If you had a million Government inspectors they could not put the locomotives in condition.

Mr. HERSEY. No; but they could inspect all of them.

Mr. STEVENSON. Yes.

Mr. HERSEY. You say that there are not enough of them to inspect the roads?

Mr. STEVENSON. That is true.

Mr. HERSEY. That is the fault of whom? Is that the fault of the Attorney General?

Mr. STEVENSON. No, sir.

Mr. FOSTER. May I ask one question, Mr. Stevenson? We have been free and easy here. You have had these conversations with the Attorney General introduced for weeks.

Mr. STEVENSON. Yes, sir.

Mr. FOSTER. In your judgment, knowing the attitude of the Attorney General, do you think his conduct in this matter has been such that in your judgment as Attorney General he should be impeached? Give the committee the benefit of your judgment. You have been in touch with the situation.

Mr. STEVENSON. That is a difficult question to ask.

Mr. FOSTER. Yes; but the committee just wants your judgment.

Mr. STEVENSON. No; I don't think so.

Mr. BIRD. Did I understand you to say some little time back that you would not have wished a rigid injunctive relief along this line—a rigid enforcement?

Mr. STEVENSON. We would not have asked—I think even Chairman McChord and the Bureau of Locomotive Inspection will say that the chiefs of the brotherhoods have realized the condition arising out of the shop crafts' strike and have told the men not to be fractious or captious about little bits of things, but to operate a locomotive if it could be done with a reasonable degree of safety. In return we are asking that, so far as inspections, washouts, tests, and so on, provided by the law were concerned, that they should be made so that our men could with reason under those hidden dangers take a locomotive out; they could see if the frame was broken or if the crosshead was broken or if staybolts were missing, and things of that kind; but as to whether the crown sheet was burned and weakened, or if there was mud inside the boiler when the engineer goes up, he can't look inside the boiler; and if she was not washed out there was likely to be mud there, and we were asking that the railroads be required to fulfill those specific things that the Interstate Commerce Commission say are necessary for ordinary safety.

Mr. GOODYKOONTZ. The President took the position in his letter to Chairman McChord that these laws ought to be enforced without regard to results. I think he was right about it.

The CHAIRMAN. Now, gentlemen, I think we had better adjourn and be here promptly at 10.30 o'clock to-morrow morning.

(Thereupon, at 10.20 o'clock p. m., the committee adjourned until 10.30 a. m. Thursday, December 14, 1922.)

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COMMITTEE ON THE JUDICIARY,  
HOUSE OF REPRESENTATIVES,  
*Thursday, December 14, 1922.*

The committee met at 10.30 o'clock a. m., Hon. Andrew J. Volstead (chairman) presiding.

**THE MACAULEY PAPERS.**

The CHAIRMAN. Let me ask you, Mr. Howland, if you have those Macauley papers?

Mr. HOWLAND. Those papers are not in our possession. We have made every possible hunt for them. The last recollection I have of the Macauley papers is that they were handed up to the chairman,



and the question was as to the admissibility of the printed memorandum, which was subsequently decided, and the paper did not come back to us.

The CHAIRMAN. It was left open, without any decision.

Mr. RALSTON. The committee afterwards decided, as I understood it, that it was all to be admitted, and that being true——

The CHAIRMAN. I was going to say that as far as I am concerned I tried at first to keep out some things that I thought were clearly not admissible.

Mr. HOWLAND. We are very much concerned about the papers.

Mr. FOSTER. The papers were on the bench here yesterday afternoon.

Mr. HOWLAND. Yes; they were all handed up.

The CHAIRMAN. It is possible that the stenographer who was here at the time has the papers.

The STENOGRAPHER. The papers have never reached the stenographers, Mr. Chairman.

Mr. RALSTON. There were several letters which were improper to be admitted.

Mr. HOWLAND. Yes. It was the Burns file.

The CHAIRMAN. I agree on that. One reason I sustained the objection was that there was not sufficient identification of the papers which really belonged in the offer.

Mr. MICHENER. The last I saw of those papers, Mr. Chairman, Mr. Ralston laid them on the desk.

Mr. RALSTON. That is my recollection; that they were handed to Mr. Volstead.

Mr. SEYMOUR. The papers were in a Department of Justice cover marked "Burns protest."

Mr. HOWLAND. They were with reference to the Macauley letter.  
(The papers referred to are as follows:)

OCTOBER 1, 1921.

Mr. A. P. MACAULEY.

*Toronto, Ontario, Canada.*

MY DEAR SIR: I beg to acknowledge receipt of your favor of the 17th, which has been referred to me by the President, in which you protest against the appointment of W. J. Burns as Director of the Bureau of Investigation in this department. I have been interested in reading your inclosures, which information I had before considering Mr. Burns's appointment. I have known Mr. Burns for many, many years and am quite sure he will render me and the administration faithful and efficient service.

Yours very truly,

ATTORNEY GENERAL.

TORONTO, ONTARIO, *September 17, 1921.*

DEAR MR. PRESIDENT: As a citizen of the United States of America I deem it advisable and of importance to lay a few documents before you pertaining to the W. J. Burns International Detective Agency and to W. J. Burns, who has, I understand, been appointed to an important position under your administration and whose appointment has created a great deal of comment throughout America. Among the documents there is a statement by ex-Attorney General George W. Wickersham, which could be verified by an interview

with him. I have in my possession a great deal of other documentary evidence and articles pertaining to W. J. Burns and his agency which, if desired, I will forward to you.

May I ask that you give this matter your earnest consideration?

Very respectfully yours,

A. P. MACAULEY.

Hon. WARREN G. HARDING, Esq.,

*President of the United States of America,*

*White House, Washington, D. C.*

REPORT OF UNITED STATES ATTORNEY GENERAL GEORGE W. WICKERSHAM ON WHICH PRESIDENT WILLIAM H. TAFT PARDONED WILLIAM N. JONES, OF PORTLAND, OREG.—DETECTIVE BURNS UNMASKED.

"Private detectives, 90 per cent of them, as a class are the worst lot of crooks and blackmailing scoundrels that live outside of prisons." This charge has been reiterated and emphasized on any and all occasions when a sensational opportunity was at hand or could be created by the most conspicuous if not the most notorious detective of the day, William J. Burns. In view of events of the recent past the charge demands consideration. It appears that Burns's personal practices and "inside" information have had much influence in his reaching his conclusion and making his charge. It is said by scientists that in some cases in the ego of great wrongdoers or criminals they will describe their own guilt by ascribing it to others; that many a crook has been brought to justice by just this species of ego mania.

It is in view of recent revelations that the bombastic and flatulent mouthings of Detective Burns can be understood that he always did and will, to use his own language, "get the man I am after." In what follows no connection exists in regard to any labor case, but it discloses the trend of mind and the method of Detective Burns and his own characterization of private detectives, of which he is so notorious an example.

It will be remembered that a few years ago there was considerable discussion as to the system of land grabbing and land frauds in the far West. That there was considerable basis that the land of the people and the Government was being unlawfully and fraudulently stolen there can be no question. That some men charged were guilty there is no doubt, but that men wholly innocent were convicted by the Burns methods employed is now fully and officially established.

When the newspapers of the country a few days ago published the fact that the President had pardoned Williard N. Jones, of Portland, Oreg., and that the pardon was based upon an official report made to him by United States Attorney General Wickersham, the following letter was addressed to the President of the United States:

WASHINGTON, D. C., *June 10, 1912.*

DEAR SIR: I have read with unusual interest the press reports of the pardoning of Mr. Jones in the land cases. I would esteem it a very great favor if you would have sent to me a copy of the report in the case upon which you issued the pardon.

Thanking you in advance for your courtesy, I remain,

Very respectfully yours,

SAMUEL GOMPERS,

*President American Federation of Labor.*

Hon. WM. H. TAFT,

*President of the United States,*

*White House, Washington, D. C.*

To which the following reply was received:

THE WHITE HOUSE,  
*Washington, June 11, 1912.*

MY DEAR MR. GOMPERS: I have yours of June 10. I have great pleasure in sending you a copy of the full report in the case.

Sincerely yours,

WM. H. TAFT.

Mr. SAMUEL GOMPERS,

*801 G Street NW., Washington, D. C.*

The report which the President received from Attorney General Wickersham, which accompanied the President's letter, disclosing the indisputable evidence

of Detective Burns's criminally crooked methods to bring about a conviction of Mr. Jones, follows:

(Here follows the report printed on pages — to — of this hearing.)

Thus is fully established the fact, in Burns's own handwriting, that he has proven himself to stand as the worst type of private detectives which he so illuminatingly describes. In all modern history there is no more glaring case of a deliberate, malicious purpose to convict a man by suborning witnesses, by false testimony, and jury packing than is made officially clear in this case. The President had no alternative. He unconditionally pardoned Mr. Jones, relieving him of payment of fines and of jail sentences. The President's statement accompanying the pardon, though not made public, is understood to be a scathing arraignment of Detective Burns and others implicated with him. Through the statute of limitations Burns will escape prosecution and punishment, yet he stands convicted in the limelight which he sought and made. (Reprint, American Federationist, July, 1912.)

CITY OF ATLANTA, GA., April 29, 1918.

Mr. A. P. MACAULEY,  
608 Lumsden Building, Toronto, Canada.

DEAR SIR: Replying to your letter of 26th instant with regard to Burns's detective agency which at one time operated in Atlanta, I beg to advise that his commission was revoked here on account of various violations of the law and city ordinances, and cases were made against several of his men who were employed and working with his agency here and they were prosecuted and convicted. So far we have been unable to apprehend Mr. W. J. Burns himself, and he is now a fugitive from justice.

Very respectfully,

J. L. BEAVERS, *Chief of Police.*

APRIL 28, 1921.

Rev. MILTON M. BROWN,  
214 West Twentieth Street, Lorain, Ohio.

DEAR SIR: The Attorney General directs me to acknowledge receipt, by reference of the President, of your letter of the 23d instant, protesting against the possible appointment of William Burns, of the Burns detective agency, to a position under the Government, and to say that your letter will be given due consideration at the proper time, so far as this department is concerned.

Respectfully,

W. F. GIBBS,  
*Private Secretary and Assistant to the Attorney General.*

METHODIST EPISCOPAL CHURCH,  
Lorain, Ohio, April 23, 1921.

President WARREN G. HARDING,  
Washington, D. C.

MY DEAR SIR: I write to you to protest against the appointment of Mr. Burns, of the Burns detective agency, receiving any appointment from the United States Government. I understand that he is a Knight of Columbus and his own record and character is not what such a man's character should be.

Very truly yours,

MILTON M. BROWN.

CENTRAL TRADES AND LABOR COUNCIL,  
New York City, March 19, 1921.

HON. WARREN G. HARDING,  
*President of the United States, Washington, D. C.*

MY DEAR MR. PRESIDENT: The Central Trades and Labor Council of Greater New York and Vicinity, representing all of the trade-unions in this city, instructed me at its meeting on Wednesday evening, March 16, to communicate with you and that we most strenuously object to the appointment

or proposed appointment of William J. Burns as head of the secret-service department of the United States.

We believe that you, as President of our country, will be able to find many men of sufficient intelligence and men about whom no odium has ever been cast as to their business methods who will successfully carry on the important work of this branch of our Government.

We wish to prevail upon you to give every consideration to our request because of the fact that so much question has been raised as to Mr. Burns's eligibility for that position.

Wishing you continued success and prosperity as President of our country, I beg to remain,

Respectfully yours,  
[SEAL.]

WILLIAM F. KEHOE, *Secretary.*

ATLANTA, GA., April 29, 1918.

Mr. A. P. MACAULEY,  
608 Lumsden Building, Toronto, Canada.

DEAR SIR: Replying to your letter of 26th instant with regard to Burns's Detective Agency, which at one time operated in Atlanta, I beg to advise that his commission was revoked here on account of various violations of the law and city ordinances, and cases were made against several of his men who were employed and working with his agency here, and they were prosecuted and convicted. So far we have been unable to apprehend Mr. W. J. Burns himself, and he is now a fugitive from justice.

Very respectfully,

J. L. BEAVERS,  
*Chief of Police.*

[Jack Canuck, a Canadian publication, August 7, 1921.]

#### SPYING ON LABOR.

LEADER OF LABOR GROUP IN LEGISLATURE CONGRATULATES JACK CANUCK ON ITS REVELATIONS REGARDING THE BURNS AGENCY—TRADE COUNCILS HAVE TAKEN UP THE QUESTION ALSO.

Our article of last week proving how the W. J. Burns Detective Agency (Ltd.) canvasses employers of labor to install spies at labor conventions and trouble makers (our French friends have a most expressive phrase, agents provocateur, instigators of trouble) in factories and mills, created a widespread sensation throughout the Province of Ontario. We have received letters and telephone messages from all over the Province congratulating us upon our courage in grappling with this evil feature of the labor situation.

"Well done! You are the only journal in Ontario which has the guts to tell the truth about these Iscariots," said one of the labor leaders at Welland over the phone. "This turning of your searchlight onto the Burns agency is a good follow up of your article of some weeks ago in which you told of the use of Yankee thugs at Thorold at the Beaverboard plant. Keep up the good work and look into the operations of some of the other agencies. They are just as bad as the Burns."

#### WALTER ROLLO PROMISES ACTION.

A copy of the issue of Jack Canuck containing the article was sent, with a covering letter, to Hon. Walter R. Rollo, minister of labor for Ontario, and we are in receipt of a reply from him which is most encouraging and leads us to believe that when the evidence which we possess is presented to him the Government will take action in the right direction. We shall wait and see in hope that on the minister's return from Winnipeg the whole question will be gone into by the cabinet.

Sympathetic and cordial support comes from George Halcrow, M. L. A. for Hamilton, the real leader of the labor group in the legislature, who writes:

"Let me congratulate you on the publicity you give to such questions and the consequent value of your paper to the general public. Let me say that I, with the indorsation of various labor members, protested against the renewal of the license to this agency, and asked Hon. Peter Smith to cancel their license at the time the house was in session on grounds similar to those contained in your last issue. I feel that your stand is well taken and hope that you will be successful where I have failed."

STANDARD LIBRARIES

Note the significance of this! Mr. Halcrow tells us that last session he and other members of the labor group asked the provincial treasurer to cancel the licenses of all detective agencies operating on the same lines as the W. J. Burns agency. They had not then the evidence before them of conspiracy against labor which they now possess, but they knew "the nature of the beast," and were on their guard. We hope that by the time the legislature reassembles we shall have sufficient further evidence to condemn all these American agencies which, under the guise of police bureaus, are nothing but paid spies and sometimes partners in blackmail.

#### MODERN POWERS OF HELL.

Tom Toombs, labor M. L. A. for Peterborough, writes: "Without doubt all private detective agencies should be cut out. So far as their activities are concerned in the labor movement, they are a menace to the peace of the country, in my opinion."

It is such organizations that make the work of cooperation impossible. Looking into this matter, I find it difficult to get people to believe that such a state of affairs exist in our Dominion; and if you can prove to the public that such a condition really exists, which I am sure you can, you will have done a great public service.

After reading your article I went to the telephone. The first advertisement I saw on the telephone book was one for "Employers' Detective Agency, president, W. N. Simpson; vice presidents, H. H. Wright and M. E. White; offices everywhere." I began to wonder what cause is this, that is creating such organizations for spying into the business of the workingmen's organizations.

Are we getting worse in Canada than they were in Russia before the monarchical downfall? These spies in Russia got men transported to Siberia. In this country they get them sentenced to a slow death by starvation. Canadian labor has a high moral and spiritual ideal of brotherhood, the greatest and most noble ideal, which, if allowed to go on must come out victorious. If we really believe in the adage of might is right. So the powers of hell are let loose in the form of private detective agencies to slowly murder by slow death or starvation, and who think and act for what is right, sentencing to slow death the moral strength of the nation. What can the end be? Must history repeat itself in Canada as in Russia? The only Bolsheviks in Canada are those who work and manage these agencies and who start such ridiculous propaganda for the sake of discrediting a lawful and highly moral organization called the Labor movement.

These agency advertisements show their paid agents are in the Labor movement and conventions according to your article, so the prominent men of the Labor movement know all the Bolshevik propaganda originates outside of Labor, but is injected as a virus into an ideal movement by such interests as have all to lose by a higher moral standard of living.

For you to throw proper light upon this subject, Jack, makes your publication well worth while. The crushing of these despicable, spying organizations called private detective agencies, will get the support of all honorable people.

Trade and labor councils throughout the Province are taking this matter up, and it is also expected that it will be discussed at the Dominion Trades Congress at Winnipeg.

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[Jack Canuck, a Canadian publication, August 20, 1921.]

#### SPYING ON LABOR.

ONTARIO GOVERNMENT ASKED TO CANCEL LICENSE OF W. J. BURNS AGENCY IN ONTARIO—SENSATIONAL EXPOSÉ OF HOW SPIES ARE PUT INTO PLANTS TO FOMENT TROUBLE.

Hon. W. E. RANEY,  
*Attorney General of Ontario,*  
*and*

Hon. W. R. ROLLO,  
*Minister of Labor for Ontario.*

GENTLEMEN. Are you aware that there is in the Province of Ontario an agency, chartered by Government, which appeals to manufacturers and business men generally to foment labor troubles by a deliberate system of espionage?



We refer to the William J. Burns International Detective Agency of Canada. Ltd., which received a charter from Thomas W. McGarry when he was provincial treasurer of Ontario; and before proceeding further, we might suggest that if you look into the manner in which that license was granted you will find something very interesting indeed; but of that more anon, perhaps.

What we desire to draw to your attention at present is a letter sent out by this precious Burns agency to manufacturers of Ontario, offering to place spies in factories to foment disputes for a consideration. This remarkable document boasts of the action taken by the Burns agency in the celebrated McNamara case in Los Angeles (as to which Mr. Rollo will perhaps be more familiar than is the Attorney General), and goes on to say:

"It may give you confidence in our Canadian service when we inform you that we are in a position to do just as good work to-day in Canada as we did then in the United States."

"Good work!" What do you think of that, Walter Rollo? Will you, as the representative of organized labor in the government of Ontario, permit an agency to continue business in this Province on the same lines as made its very name stench in the nostrils of every decent citizen, whether he be a union man or not?

That is but the beginning. This Burns Agency offers to place agents in any labor convention that may be named, and to report to any employer or group of employers the proceedings of such convention for the sum of \$25 per convention. It is a pity the price of betrayal was not at once made 30 pieces of silver. That would have been much more appropriate, but perhaps they were counting, like most Yankee visitors to this country, upon the benefit of the exchange, which would make the \$25 just about the equal of the bribe of Judas!

#### TO PLACE SPIES IN FACTORIES.

Not satisfied with betraying the proceedings of conventions to which its emissaries could only obtain admission on false pretenses, this Burns Detective Agency goes on to say:

"If the average employer would treat the labor situation as he does the fire situation, he would find a great deal more benefit derived from treating labor troubles as he does fires than he does from his fire insurance, and that is the point we are trying to make clear. We want all employers of labor to adopt labor insurance. It is expensive, and this is accounted for because labor troubles are expensive.

"When you consider for a moment the difference between loss incurred through labor troubles and that incurred through fire, it should occur to you that labor insurance is necessary if fire insurance is necessary, and that there are very few firms doing business not covered by fire insurance.

"The only way that effective labor insurance can be secured is through secret service. Place one or more of our operatives, for instance, in your plant and know what is going on. It is a great deal easier to protect yourself against labor troubles than it is against fire. No one can tell when a fire is going to break out, and one can not handle a fire until after it has broken out, but our operatives are able to inform us when, where, and how labor troubles will break out, and their information transmitted to you places you in a position to prevent labor troubles in one of many ways (sic).

"We have written rather more than we intended on the start, and do not want you to forget the object of this letter, which is to sell you reports of the ——— and ——— conventions, and interest you in placing one or more of our operatives in your plant, so that you may know just what is going on and what your employees intend to do."

How's that for organized conspiracy against union labor, Mr. Rollo? We have a copy of this letter in our possession, and shall be very glad to hand it over to you with the name of the firm in western Ontario to whom it is addressed if you will promise us to have an official investigation made into the operations of the W. J. Burns Detective Agency in this Province of Ontario.

And Mr. Attorney General, we should like to have your opinion as to the legality of this sort of operation by this notorious American "detective" agency. Does its charter give it the right to place spies in factories to encourage sabotage and foment strikes, because anyone who has studied the labor question knows that that, and that alone, is the intention of these Iscariots?

We shall have more to say later as to other features of the operations of the W. J. Burns Agency in Ontario, but the above letter should give both you gentlemen cause for thought as to whether you will be true to your oath of office if you longer permit this band of trouble makers to do business in Ontario.

And in conclusion, we venture to suggest that if you will ask the attorney general of Quebec why the license of the Burns Agency was canceled in that province, you will find additional cause for withdrawing the license granted to it by T. W. McGarry to carry on its nefarious business in Ontario.

Yours for a clean out,

JACK CANUCK.

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[Jack Canuck, a Canadian publication, Sept. 17, 1921.]

**LICENSE CANCELED.—BURNS DETECTIVE AGENCY CAN NOT DO BUSINESS IN ONTARIO.—HOW TWO RIVAL SETS OF CROOK DETECTIVES DOUBLE-CROSSED PEOPLE.**

The license of the William J. Burns International Detective Agency to do business in Ontario has been canceled.

Our readers will recall that in our issue dated August 20 we exposed the methods by which this notorious American agency sought to embroil capital and labor, and that in the following issue we published a statement from Hon. Walter Rollo, Minister of Labor, and commendations of approval of our course of action by other leaders of Labor. Since then we have received resolutions and letters of thanks from practically all the Trades and Labor Councils in Ontario, and now we are glad to announce that the Burns agency is out of business in Ontario.

Other developments concerning private detective agencies generally are pending, and Jack Canuck will keep its readers posted as to what goes on.

Meantime we have accomplished what we set out to do as regards the Burns agency.

**DOUBLE-CROSSED BOTH SIDES.**

The activity of alien detective agencies in Canada is attracting a good deal of general attention just now on account of Jack Canuck's exposures of the Burns' agency methods. How much longer do the Canadian authorities propose to stand for these outrages of men calling themselves "detectives," operating in Canada under a charter obtained in Chicago or New York? One correspondent recalls the scandal a few years ago in Manitoba, when two of these rival Yankee "detective" agencies were involved in the scandal which centered around the thefts in connection with the construction of the Manitoba Parliament buildings. At that time the rival political organizations employed the rival Yankee "detective" associations. Possibly they went to Chicago for this sort of talent, because both sides realized that they could not expect that kind of "service" from reputable Canadian concerns. Anyway, these two Yankee gangs did precisely what might be expected of them: each double-crossed their employers and sold their "information" to the rival crowd. In other words, they bled the two political organizations for what they could, and then exchanged confidences and sold that to rival sides. Can you beat it?

But the worst feature of that scandal, as far as these alien detectives were concerned, related to their delivery of money to a witness one side was trying to keep out of the country and holding out on the crook. This actually came out in evidence in a Manitoba court when Salt, the witness who had fled to the States, testified that when the representatives of one of these alien detective agencies delivered to him \$10,000 he deducted \$800 from the amount, claiming that was the cost of "exchange." Of course Canadian money was at par at that time, and the "exchange" was a straight steal. When Salt disclosed the name of the foreign agency, a demand was at once made for the cancellation of that agency's right to do business in Canada on the obvious ground that, in conniving to keep a witness out of court, the agency was joining in a criminal conspiracy against the Dominion of Canada. Winnipeg papers at the time editorially commented on the extraordinary revelations and urged that the Government cancel the license of the offending agency. Now,

why was not that course pursued? Isn't that a reasonable query for the Canadian public to emphasize? But the fact remains that these two particular Yankee detective agencies have offices all over the Dominion by sufferance of the authorities. Of course, something ought to be done. One reason that these alien agencies are not expelled from Canada is that they are utilized by influential corporations as "spotters," a form of employment Canadian agencies do not specialize in. Canadian detective agencies shun this class of work which the alien agencies find so profitable. The aliens are better fitted for that sort of thing, for it is not detective skill that is required in these "spotting" campaigns so much as lying and deceit.

It is hard to ask a real man to engage in the rotten business of spotting. That means that a detective "operative" seeks the confidence of his intended victim. He makes him believe he is a friend. He pretends for months to be his friend, then seeks a favor that only a friend can seek, with hope of securing consideration.

#### HERE IS A SAMPLE CASE

that started in Toronto a year ago, though the tragic climax came in Winnipeg. There was a young Toronto boy, a returned soldier, employed as sleeping-car conductor between Toronto and Winnipeg. A "sleuth" employed by a Chicago agency, with a branch in Toronto, went to Toronto and opened a small store as an automobile-accessory agent. He frequented restaurants where this particular conductor ate. He found it convenient to sit at the same table with the ex-service man, and began a casual conversation as men do under such circumstances. Then he was buying a cigar, and he casually asked the boy conductor to have one.

This casual acquaintance continued for weeks with no suggestion of what the Chicago rascal was driving at. He even went so far as to have his automobile handy when he knew the conductor was arriving at the station and, as "he was going that way," drove the conductor home. Gradually he established the basis for the trap, and it was a trap. He was even riding on the trains where the soldier was employed, but made no suggestion of his game. When all was in readiness—and this is the story repeated by one of the companion conductors of the ruined lad after the Chicago detective had worked his ruin—this Chicago product suddenly appeared at the station. He had to go to Winnipeg and was without funds. The call was urgent, and he just had money enough to buy a ticket. Would his friend carry him in the sleeper? The boy would and did.

This was the beginning of the end. This Canadian lad had a reputation for efficiency and honesty extending over several years. No one knew aught about the Chicago sleuth. Ultimately, there is no doubt, the boy was urged and did accept money from this "spotter" to let him and "friend" ride in his car. This second "friend" was also from Chicago and connected with the same agency. When the boy arrived in Winnipeg one fine day he was arrested, and these two Chicago rascals were there to prosecute him. Of course, he was convicted.

How does this sound? It's rotten, but it's true; and these are the alien agencies that are used for this sort of business, perhaps because Canadian detectives refuse to engage in this sort of traffic.

**Mr. RALSTON.** Mr. Chairman, before proceeding with the witness I want to ask if there have yet been produced the documents that were called for with reference to the Elk Hill matter, in California, and the oil lands which were taken by the Standard Oil.

**Mr. SEYMOUR.** They are being brought down now. I want to say with reference to some requests for private or secret files of Mr. Burns, that there is none in the three departments. One, papers that would be filed in connection with his appointment. There are none other than the file that we presented here, and which we are now asking about. We have offered that file which was in Mr. Finch's file relating to the Jones case. Those were all here. There are no other files relating to Mr. Burns, unless it is in the New York office, and we have a man searching there now.

Mr. RALSTON. Will you go further and say that there were none?

Mr. SEYMOUR. No; I have no knowledge of that.

Mr. RALSTON. We will have to come to that later.

Mr. SEYMOUR. Of course, I have only been in this 30 days and have not had very great opportunity.

Mr. RALSTON. Another thing, Mr. Chairman; I want at this time to ask the committee to be kind enough to call on the Department of Justice for the names and the daily reports of the operatives of the Bureau of Investigation who shadowed Mr. Woodruff, Mr. Johnson, and Senator Caraway, and I shall want that presumably during the day.

Mr. HOWLAND. Why, how impossible, Mr. Chairman, in the face of our denial that any such thing was ever done to grant the request, assuming that it had been done?

Mr. RALSTON. Very well.

Mr. HOWLAND. If there is any proof before the committee or at the time when any proof is presented to the committee that any such thing has ever been done by any man in particular or the department in general, we will produce the documents and all names and all information in our possession.

Mr. RALSTON. I am content, then, for my present purposes that that denial shall go in. I shall have occasion to deal with the truth of the denial, which is made in good faith of course, by Mr. Howland, later on.

The CHAIRMAN. Are you ready to proceed with this witness?

Mr. RALSTON. Yes; we will resume with Mr. Stevenson.

#### TESTIMONY OF MR. THOMAS STEVENSON—Resumed.

Mr. RALSTON. Mr. Stevenson, in the course of our examination into the facts with you yesterday, we had gotten up, I think, with your interview with the Attorney General of October 11, and perhaps I had asked with regard to telegrams which followed that. What was the last item which you introduced? You will pardon me for not remembering it.

Mr. STEVENSON. As I recall, the last item was a telegram from the Attorney General, of October 30.

Mr. RALSTON. Pardon me for a minute. I should have added—I overlooked it for the moment—to my call upon Mr. Howland, the reports of the operatives who were detailed to and did examine the mail with which Congressman Woodruff was associated and which was sent out by Mr. Skates.

Mr. JEFFERIS. What was that? I did not hear that.

Mr. MICHENER. We did not hear it up here.

Mr. RALSTON. I want the Department of Justice to produce the names and reports, in addition to what I have already asked, of the operatives who examined the mail of Congressman Woodruff, sent out by Mr. Skates.

Mr. MICHENER. Is there any proof here that that has been done?

Mr. RALSTON. There will be.

Mr. MICHENER. Well, I, for one, want to state my position. As one member of this committee, I will insist upon that, if you want it, just as soon as you make any proof that that has been done. But I do not like the statement that the fact exists until it is proven, and basing publicity on it.

Mr. RALSTON. We have every reason to believe it to be true.

Mr. MICHENER. If you will prove it, you will find me with you and doing everything I can to get those papers. But I would like—and I think you will appreciate that as an attorney—you to make the proof and not a bald statement; and after you have made the proof, if you will demand the papers showing those things, I will try to help you get them.

Mr. HOWLAND. I have stated already that it will not be necessary for anyone to assist him, because they will be brought right here voluntarily if there are any such papers or any such report.

Mr. RALSTON. Will you read the last telegram, Mr. Stevenson?

Mr. STEVENSON (reading):

Will expect and be glad to see you and Mr. Stevenson here Wednesday morning, November 1, at 9.30.

H. M. DAUGHERTY, *Attorney General*.

Addressed to "Oscar J. Horn."

Mr. RALSTON. You have told what happened at that interview?

Mr. STEVENSON. Yes.

Mr. RALSTON. About Mr. Esterline?

Mr. STEVENSON. Was he detailed to this case?

The CHAIRMAN. I wish you would talk a little louder, please.

Mr. STEVENSON. I do not know if Mr. Esterline was detailed to the case. But Mr. Esterline was in the early conferences with the Attorney General and was requested, at least at its inception, to take up with us the questions of law involved.

Mr. RALSTON. What was the next event in sequence of time that occurred?

Mr. STEVENSON. That is, subsequent to November?

Mr. RALSTON. Yes.

Mr. STEVENSON. We received a letter to Mr. Horn and myself from the department—from the office of the Solicitor General—signed by Mr. Esterline, which is dated November 3.

Mr. RALSTON. Will you give that, please?

(At this point the witness produced a paper and handed it to Mr. Ralston.)

Mr. RALSTON (reading):

OSCAR J. HORN, Esq.,

*Attorney for the Brotherhood of Local Engineers;*

THOMAS STEVENSON, Esq.,

*Attorney for the Brotherhood of Locomotive Firemen and Engineers,  
1024 Engineers Building, Cleveland, Ohio.*

DEAR SIR: This morning I again had another full discussion with the Attorney General with respect to matters brought to our attention by you in your recent conferences and written communications. As I stated to Mr. Stevenson at the conclusion of our conference yesterday, transportation of necessities and the bulk commodities—that is, coal, grain, building material, etc.—is now at its peak, and would overburden any transportation system, even if it were in prime condition. Any action which would tend to set back on the eve of winter the heavy or continuous movement of these essential commodities would not only seriously affect the public interests, but might far more



than counterbalance any advantages which would accrue to your clients or accrue to the public. Moreover, to the Interstate Commerce Commission is committed the authority to enforce the laws pertaining to the use of defective equipment, etc.

The further question is up of renewing to Congress the recommendation of the President, the committee and this department for broader powers to the commission with increased appropriations and larger forces to enforce these laws.

Of all of these subjects must be considered together as a single governmental policy. The Attorney General has arranged to go over all of these subjects with me again immediately upon my return from the West next week. In the meantime, he will give them some independent consideration. It is also his desire that you consider them further in the light of the foregoing suggestions, to the end that we may shortly have a further conference at which a final conclusion may be reached.

Very truly yours,

BLACKBURN ESTERLINE,  
*Assistant to the Solicitor General.*

Mr. FOSTER. The date of that, please.

Mr. RALSTON. It is November 3.

Mr. SUMNERS. Mr. Chairman, may I ask a question at that point?

The CHAIRMAN. Yes.

Mr. SUMNERS. Does not that communication just read represent the issue that is joined between your organization and the Attorney General? That states the position with reference to the probable effect on the public interest of the enforcement of laws that ought to be enforced through the instrumentality of a suit in equity? That, you understand, to be about the position of the Attorney General?

Mr. STEVENSON. Yes, sir.

Mr. FOSTER. Now, if that is the position of the Attorney General—and it being, I assume, quite if not entirely a matter of common knowledge that the engines of the railroads were in bad condition—then is it not more a matter of either independent investigation on the part of the committee or argument with reference to the duties in the premises rather than a matter of further testimony on this point?

I make that suggestion simply for the one purpose of seeking, if possible, to get the issue clean-cut and conclude the testimony on this one point.

Mr. RALSTON. Perhaps I can then come to the point that Mr. Sumners has in mind by asking Mr. Stevenson at this point to explain why he thinks, on authority, an action in equity was sustainable and that it was the duty of the Attorney General to bring such action.

Mr. SUMNERS. Would that be a matter of testimony or argument?

Mr. RALSTON. Not argument, except for the submission of the authorities.

Mr. SUMNERS. I do not want to interfere with the procedure. I am simply trying to help it along.

Mr. HICKEY. But it does resolve itself into a question of whether the Attorney General should proceed in equity in those cases or whether he should turn the matter over to the Interstate Commerce Commission.

The CHAIRMAN. And perhaps, too, what would be the interest of the public.

Mr. HICKEY. And the further question of additional legislation to give the authority to do things that the brotherhood wants him to do.

Mr. MONTAGUE. Your complaint of the Attorney General is that he did not institute equity proceedings, is it not?

Mr. STEVENSON. I am not complaining, sir; that is, in this proceeding I think the Attorney General would say that we have pressed this matter very vigorously—too strongly at times—but the situation has been that locomotives are defective on certain roads; we are having men killed and we are having explosions with great frequency on some properties.

Mr. MONTAGUE. Let me change my wording. I used the word "complaint." I withdraw that word. The matter was a request to the Attorney General that he should institute equity proceedings in the form of injunction.

Mr. STEVENSON. Yes, sir.

Mr. MONTAGUE. This was the particular matter you stressed before the Attorney General?

Mr. STEVENSON. Yes, sir.

Mr. SUMNERS. I assume that there is not any serious disagreement between yourself and the Attorney General with reference to the facts concerning the condition of the engines operating on the railroads?

Mr. STEVENSON. No, sir.

Mr. SUMNERS. That is the point I was trying to bring out—to remove any apparent reason for the introduction of further testimony.

Mr. STEVENSON. I think from the beginning the Department of Justice and the Attorney General must see that conditions are bad, and I think they now have proof.

Mr. HICKEY. Your position is that the evil exists and the way things are being operated on the railroads is bad, and you want some way to correct them?

Mr. STEVENSON. Yes, sir. What we have asked is the enforcement of the safety statutes to protect the members of our organizations, particularly, and the public in general, which is what the statutes were passed for.

Mr. HICKEY. And your plan has been that a suit in equity would be adequate to give relief in this case?

Mr. STEVENSON. Yes, sir.

Mr. HICKEY. And you and the Attorney General have disagreed with respect to that?

Mr. STEVENSON. I do not know that we have disagreed yet.

Mr. HICKEY. You are still in conference with relation to it?

Mr. STEVENSON. Yes, sir. I was in the department on Saturday last.

Mr. FOSTER. The matter is still open between you and the Attorney General—negotiating on that point?

Mr. STEVENSON. Yes, sir.

Mr. FOSTER. To try to find some remedy that will cure this trouble?

Mr. STEVENSON. Yes, sir.

Mr. HICKEY. You are working together harmoniously to accomplish that purpose?

Mr. STEVENSON. Yes, sir.

Mr. CLASSON. Did you ever suggest a suit in equity to the Attorney General?

Mr. STEVENSON. Yes, sir.

Mr. CLASSON. Did you insist on it?

Mr. STEVENSON. Yes, sir.

Mr. CLASSON. What did he say about it?

Mr. STEVENSON. The specific point was that if he was satisfied that a suit in equity would lie, which, in the beginning was a debatable question, that the next thing was to have sufficient proof to sustain any such bill that he might bring.

We have been under the impression that between us we have arrived at a conclusion that a suit in equity will lie and, so far as I am informed, the department has been exercising itself to get the proof; they had men, as I said yesterday, in the inspection department collating the facts in the way that it wishes to have them, and we are at a point of expectancy.

Mr. CLASSON. Have you any fault to find with the diligence of the Attorney General in getting that proof and satisfying himself on the law?

Mr. STEVENSON. We had hoped and pressed for immediate action. As representing clients who were losing men by death and injury, I would consider myself dilatory if I did not do so. There were certain bad railroad conditions, concerning which we were of the opinion that immediate action would lie. For example, where the circumstances were that the railroads were in the hands of the Federal court operated by a Federal receiver, and here is a Federal safety statute, and the reports of the Government inspectors was that the safety statutes were being set at naught by that receiver, we felt that it would be appropriate action for the Attorney General to go into that Federal court and file a motion asking for an order directing the receiver to comply with the safety statutes. We might be in error in that. We concede that it is a matter of consideration for the Attorney General. That is what we thought, and, at least, we stressed it in the interest of science.

Mr. CLASSON. That is your position now, is it not?

Mr. STEVENSON. Yes, sir.

Mr. CLASSON. It is a matter for consideration, and consideration is being given it?

Mr. STEVENSON. Yes, sir.

Mr. HICKEY. You have given this matter a great deal of study and thought and seem to be very fair in your conclusions. Supposing it was ultimately determined that a suit in equity will not lie, is it your opinion that additional legislation is needed to correct this condition that exists at this time with respect to the railroad situation?

Mr. STEVENSON. I am so convinced, sir, of the law, of the authorities that we have discussed with the Attorney General's Department, that there is adequate law now in equity for the Department of Justice to mandate the railroads to comply with these statutes that I do not think there is any additional legislation necessary. I think there is adequate authority at law for the enforcement of these statutes.

Mr. FOSTER. And your negotiations have reached a point now where you are hopeful that soon facts will be collected and agree-

ment will be reached on the method of procedure whereby the Attorney General will resort to court proceedings and try to remedy it.

Mr. STEVENSON. We have been hopeful for a long time.

Mr. FOSTER. I say, that is your present state of mind as a result of negotiations with that department.

Mr. STEVENSON. We should like to start to-day with it. We have not had a final conference; we are now in the position of having the final conference or getting the final decision of the Attorney General and of being called in as to what would be the appropriate thing to do.

Mr. RALSTON. Do you know of any reason why that conclusion should not have been reached two months ago?

Mr. HOWLAND. I object to that.

Mr. STEVENSON. Not as far as I know; no, sir. We have felt that we were as secure in our legal opinion two months ago as we are to-day.

Mr. RALSTON. And you communicated the grounds of your opinion to the Attorney General over two months ago, did you not, or in that neighborhood?

Mr. STEVENSON. Some time ago; yes.

Mr. RALSTON. And has he ever raised any serious question about the accuracy and correctness of your legal position as to the bringing of a suit in equity?

Mr. STEVENSON. No, sir. He has raised the question that it is a matter for some search and consideration as to whether or not—and, of course, in the letter that he received November 3 he then raised the question, and, as I said yesterday, the question was raised as to whether or not he had the legal capacity to initiate the proceedings or whether it was the Interstate Commerce Commission that should institute legal proceedings.

Mr. RALSTON. Is there anything in that question which might not have been settled finally within 24 hours?

Mr. JEFFERIS. Just a moment. I do not think that that is a proper question, Mr. Chairman. This witness, I take it, is a good lawyer. I suppose he has spent some time before he got ready to render his opinion or suggestion to the Attorney General, unless he is one of these fellows who know things right off the bat. Now, then, it would not necessarily follow, would it, that the Attorney General would just have to take his opinion?

Mr. RALSTON. I will ask this further question: Did you present all of your authorities to the Attorney General as early as six weeks or two months ago?

Mr. STEVENSON. We have not submitted any briefs on the law; we have discussed individual cases. On November 2 was perhaps the earliest that Mr. Esterline and myself discussed the law.

Mr. RALSTON. Did you and Mr. Esterline find any cases contrary to the positions that you were maintaining?

Mr. STEVENSON. No; I do not think there are any cases that we discussed; I do not recall any suggestion that there was any authority opposing the position that we took.

Mr. RALSTON. Then there was no doubtful question of law in it so far as you could discover.

Mr. HICKEY. Oh, well——

The CHAIRMAN (interposing). I am inclined to think we might have some doubts ourselves.

Mr. MONTAGUE. Was the question discussed as to the insufficiency of the decisions or the inapplicability of authorities submitted by you?

Mr. STEVENSON. No, I do think the authorities that we submitted were gravely suggested as to the right of the Attorney General to institute such a suit.

Mr. MONTAGUE. Was the Porto Rican decision cited as authorizing an injunctive proceeding?

Mr. STEVENSON. It was not seriously disputed.

Mr. MONTAGUE. It was not?

Mr. STEVENSON. No, sir.

Mr. MONTAGUE. That case does not appear at all applicable to your contention.

Mr. FOSTER. During the last two months' negotiations with the Attorney General, Mr. Esterline, and the other attorneys, in your judgment, have all negotiations been in good faith on both sides, tending to reach a conclusion?

Mr. RALSTON. I object to that. He can only speak of his own good faith.

Mr. FOSTER. I will withdraw it, if you object. I thought you were discussing the legal opinion.

Mr. RALSTON. We can not read the Attorney General's mind, so far as I know.

Mr. FOSTER. Was there any act on the part of the Attorney General or his assistants during the few months negotiations other than an honest attempt to reach the conclusions of law, collect facts and try to secure remedies?

Mr. RALSTON. I think that is subject to the same objection. However, I will not insist on it, if we can make the case.

Mr. STEVENSON. Not that was disclosed to us.

The CHAIRMAN. Perhaps it is not in order, but since you have been asking similar questions, subject to the same objections, I do not believe I ought to sustain this objection.

Mr. RALSTON. There have been very objectionable questions asked as to his opinion.

The CHAIRMAN. You asked just the same sort of questions yourself, and consequently I think it is perfectly proper to allow this.

Mr. FOSTER. If that is his position, I withdraw the question.

Mr. RALSTON. I am concerned only in his presentation of the facts.

Mr. STEVENSON. If I may be permitted, it was suggested last night—I might say I would liked to have begged off and have gone to bed. I have a very bad cold. But there is a case in 122 Federal, 524, a decision by Judge Grosscup, which I would like you to look at, and we have felt that the Debs case is a Bible in the proceedings that we are asking to be brought here.

Mr. JEFFERIS. What is the number of that case?

Mr. STEVENSON. One hundred and fifty-eighth United States.

Mr. CHANDLER. He said the Debs case was what?

Mr. STEVENSON. A Bible, as regards injunction proceedings. Apparently, under that case equity will lie in almost any injunction matter.



Mr. MONTAGUE. Do you have any objection—I do not know whether it is pertinent to this hearing—to give me a memorandum of the cases you have submitted? I would like to examine them.

Mr. STEVENSON. I have not a memorandum prepared; this is just temporary notes.

Mr. MONTAGUE. I do not say that you have not sufficient authorities to sustain your contention. My desire was particularly to get your views on the Porto Rican case.

Mr. HERSEY. You remember, Mr. Stevenson, in answer to my question you said you would be pleased to give me a list of authorities this morning, and I thanked you for it. Have you got them?

Mr. STEVENSON. Only as I have given them now. As I say, I was not in condition to talk. Ordinarily I would not be talking now in my present physical condition.

Mr. BIRD. Will you read your authorities later?

Mr. STEVENSON. I will be pleased to give you a list of cases that we had and that were discussed with Mr. Esterline.

Mr. MICHENER. They will all go in the record, will they not?

Mr. STEVENSON. Those cases I mentioned.

Mr. RALSTON. Will you read, at this time, the list of those authorities to the committee?

Mr. HERSEY. Well, let me ask if you can not submit a brief to the committee—submit it to the committee in your brief. You are going to submit a brief to the committee. You can just put it in that, can you not?

Mr. JEFFERIS. He can give those authorities to us, and we can look them up.

Mr. HERSEY. The committee will have his brief.

The CHAIRMAN. But, would it not be best for him to simply read the citations into the record.

Mr. JEFFERIS. Yes, read the citations, so that we can look them up.

The CHAIRMAN. Read the citations so that we can look them up and put our own construction on them.

Mr. STEVENSON. The first is the *United States v. The Milwaukee Refrigerator Transit Co.* (145 Fed. 1007); *Interstate Stock Yards Co. v. Indianapolis Union Railway Co.* (99 Fed. 472); the dissenting opinion of Justice Brewer, *Missouri Pacific Railway v. The United States* (189 U. S. 274).

Mr. HERSEY. You are not, as a lawyer, citing to this committee dissenting opinions, are you?

Mr. STEVENSON. Yes, sir; I think in a number of dissenting opinions you will find very good law.

Mr. FOSTER. I am a poor enough lawyer to agree with you.

Mr. BIRD. I agree with you, Mr. Foster, especially when Justice Brewer, of Kansas, was writing the dissenting opinion.

Mr. CHANDLER. You have to let the majority determine?

Mr. STEVENSON. This case happened in connection with some other point, and the dissenting opinion of Justice Brewer as to the authority the United States has to do in various things in equity.

Mr. CHANDLER. But the prevailing opinion is the law, whether it is right or not?

Mr. STEVENSON. But it is not on this particular question, as to the equity powers of the United States.

Mr. HERSEY. The dissenting opinion did not have anything to do with the case?

Mr. STEVENSON. I beg your pardon.

Mr. HERSEY. Not only was it a dissenting opinion, but the opinion had nothing to do with the case.

Mr. STEVENSON. It is good law, just the same.

Mr. CHANDLER. Except that it is not the law.

Mr. GOODYKOONTZ. In other words, it is an obiter dictum.

Mr. RALSTON. You presented this argument also.

Mr. STEVENSON. Yes.

Mr. RALSTON. The next step on your part was a telegram, was it not, to Mr. Daugherty?

Mr. STEVENSON. Yes, sir.

Mr. RALSTON (reading):

NOVEMBER 13, 1922.

Hon. HARRY M. DAUGHERTY,

*Attorney General, Department of Justice, Washington, D. C.:*

Last word from your department reference to violations of safety statutes dated November 3. Conditions on some of the railroads becoming worse, and practically impossible to control men much longer. Feel it imperative we get prompt action or definite advices from you to the contrary. Kindly wire answer.

OSCAR J. HORN,

*Attorney, Brotherhood of Locomotive Engineers.*

THOS. STEVENSON,

*Attorney, Brotherhood of Locomotive Firemen and Engineers.*

Mr. HERSEY. What is the date of that?

Mr. RALSTON. The date of that is November 13, 10 days later.

That telegram was repeated at the same time to the President. Did you address another telegram to Mr. Daugherty on the 14th?

Mr. STEVENSON. Yes.

Mr. RALSTON (reading):

NOVEMBER 14, 1922.

Hon. HARRY M. DAUGHERTY,

*Attorney General, Department of Justice, Washington, D. C.:*

Condition of locomotives on Texas & Pacific Railway alarming. Immediate action imperative. Can we see you to-morrow, Wednesday? Wire answer.

With the same signatures.

That telegram was repeated to the President, was it not?

Mr. STEVENSON. Yes, sir.

Mr. MONTAGUE. That was read yesterday afternoon, was it not, or last night?

Mr. RALSTON. No; I think not.

Mr. HERSEY. I think that we should get down to the facts.

Mr. MONTAGUE. I thought that you had read that.

Mr. RALSTON. It was repeated to the President. Did you receive an answer to that telegram on the 14th?

Mr. STEVENSON. Yes.

Mr. RALSTON (reading):

WASHINGTON, D. C., November 14, 1922.

Hon. THOMAS STEVENSON,

*Attorney for Brotherhood of Locomotive Engineers, Cleveland, Ohio.:*

Engagements are such impossible to see you Wednesday, but will be glad to see you Thursday, November 16, 1922, noon.

H. M. DAUGHERTY, *Attorney General.*

I now call your attention to a letter of November 14, addressed to Mr. Daugherty—what happened on November 14, first?

Mr. STEVENSON. We came to Washington on the 16th in response to that telegram of the Attorney General, Mr. Horn and myself, and as I recall it, we found Mr. Daugherty was sick, and we were met by Mr. Seymour of the department, and Mr. Esterline, and Mr. Fowler, as I recall, and I think Mr. Hayes, of the department, was also present at this meeting. We went into the subject fully again and, as I recall it, it was at that meeting that we requested that the Attorney General's department might, on some of these roads particularly that were in receivership, send a telegram to the district attorney in the jurisdiction and leave him file a motion praying for an order of the receiver to comply with the safety statute.

Mr. Daugherty, not being present, there was no definite result at the conclusion of that conference, and also it was suggested that in our contact with the department then we could keep in contact with the department through Mr. Hayes, and thereupon Mr. Horn and myself mailed two letters we had written, one on the general subject and one on the subject of the Texas & Pacific, so as to make a record of our visit, and show what we had in mind.

Mr. RALSTON. Do you have those letters?

Mr. STEVENSON. Yes.

Mr. GOODYKOONTZ. Those letters are rather lengthy, are they not?

Mr. FOSTER. Would it not be advisable to have Mr. Stevenson read them? I suggest he proceed and read them.

Mr. RALSTON. It would be a very welcome relief to me to not have to read them, if Mr. Stevenson can give the gist of them.

Mr. GOODYKOONTZ. I think that he could give the substance and then you could insert the letters in the record and let the committee get them that way.

Mr. RALSTON. If Mr. Stevenson will be kind enough to give the substance of each paragraph, we can then put the letters in the record afterwards.

Mr. STEVENSON. The first paragraph refers to the letter of November 3 from Mr. Esterline, in which the policy of the action is considered and we say that we are not in a position to discuss a matter of policy.

Mr. HERSEY. I think, Mr. Chairman, that we had better have them read.

Mr. GOODYKOONTZ. How many more have you?

Mr. STEVENSON. We have very little more—two letters.

Mr. GOODYKOONTZ. I would make the suggestion that since we understand the issues pretty well and know the tenor of the letters that if you will have the letters printed, it seems to me that that would serve every purpose.

Mr. RALSTON. It is subject to the action of the committee, if the committee wants to dispense with the reading of the letters and put them in the record.

The CHAIRMAN. Do they not practically all relate to what took place after the impeachment, anyway?

Mr. RALSTON. With the questions that I want to ask Mr. Stevenson I think that we might get along faster that way.

The CHAIRMAN. That does not answer my question. Does not practically all of this relate to matter occurring subsequent to the impeachment proceedings, and not competent testimony? But it seems that the committee wants to hear it. I ruled yesterday that it should

be shut out and was overruled, and I shall not rule out such testimony until the committee says otherwise. It clearly has no place in this record.

Mr. RALSTON. From our theory of the case it has a very direct place in this record, for the reason that this is the contention that we are making, and it is evidence in the impeachment proceedings.

The CHAIRMAN. You are offering a lot of stuff here that has no purpose in the record. It relates to conditions that existed subsequent to the impeachment. All of the acts which you complain of were subsequent to that time, and so far as the Attorney General is concerned do not connect him up with those acts. Now, in view of that fact, it seems to me clear that the only purpose that it can have is to encumber the record. I think that the record should be used for some other purpose than a wastebasket.

Mr. RALSTON. The Attorney General had precisely the same opportunity to know the situation before September 1 as he did later.

Mr. FOSTER. I think that the object is to shorten the record. I think that we should go ahead now that we have started and get it in; let Mr. Stevenson get in everything that we have started. I just thought that he could state the substance of the letters and put them in the record, and that that would save time.

Mr. STEVENSON. I think that there are only these two letters.

The CHAIRMAN. There has been a whole lot of stuff going in that is incompetent, and if the committee wants to hear some more I presume that it will be all right. The committee seems to be disposed to let you put in anything that you care or that you have.

Mr. RALSTON (reading):

NOVEMBER 14, 1922.

HON. HARRY M. DAUGHERTY,  
*Attorney General, Department of Justice,*  
*Washington, D. C.*

SIR: We are in receipt of a joint letter of November 3, signed by Mr. Blackburn Esterline, assistant to the Solicitor General, with reference to the enforcement of the safety statutes, which subject was discussed with the President, yourself, Mr. Esterline, and Mr. Grim.

This letter suggests consideration of the advisability of the institution of the legal action we proposed to compel compliance with the safety statutes, and intimated a possible result might be an interference with the continuous movement of essential commodities which might seriously affect the public interests. This is a matter of policy which we, of course, were not in a position to discuss unless the question were presented directly in this manner.

It is now over a month since we first took up this question direct with the President, and at his instance presented the question to you. At the very outset we were careful to point out that we were not dealing with a theory or moot question, but with a condition fraught with danger to the traveling public, and particularly to the train-service employees. Further, that on account of the conditions, the brotherhoods we represent had great difficulty in keeping their men on the trains. As a matter of fact, a number of their members had refused to proceed with trains on account of the danger incident to the failure of the railroads to observe the safety statutes, and as a result of that action indictments brought by the Attorney General for conspiracy to interfere with the mails and interstate commerce are now pending. We also advised you that the chief executives of these organizations had denied many petitions from their men to be permitted to withdraw from service, and had kept their members at work under pressure of severe penalties.

May we take the liberty of quoting from your bill in equity, No. 2943, entitled, "In the United States District Court for the Northern District of Illinois, Eastern Division, United States of America, complainant, v. Railway Employees' Department of American Federation of Labor et al." In paragraph 14, pages 36, 37, it is alleged:

"Furthermore, it is the duty of the Attorney General of the United States to see that all laws of the United States are enforced which are for the protection of the

public, and this applies with special force to those laws and rights of the parties fixed by governmental bodies, which can not be enforced, or are difficult of enforcement by action brought by private citizens. Such power is vested in the Attorney General by the direct and implied conditions contained in the statutes creating and defining the duties of his office and of the Department of Justice. All power relating to the regulation of interstate and foreign commerce is vested by the Constitution in the Congress of the United States, and it is especially the duty of the Attorney General to see that said provision of the Constitution and all congressional legislation based thereon be enforced, and that all findings and orders of bodies created by Congress for the purpose of preserving the free and unhampered flow of interstate and foreign commerce be observed."

Also the statement of the President in his address to the joint meeting of the two Houses of Congress on August 18, 1922:

"There are statutes forbidding conspiracy to hinder interstate commerce. There are laws to assure the highest possible safety in railway service. It is my purpose to invoke these laws, civil and criminal, against all offenders alike."

We also have in mind the statement of Mr. Esterline to the court during the trial of the injunction suit of the federated shopcrafts to the effect that the Department of Justice would at all times be found as ready to act in the interest of the workers as any other interest.

When conditions became so alarmingly dangerous and many railroads were openly ignoring the provisions of the safety statutes, and even orders of the Government inspectors, the chief executives of the organizations insisted that some action be taken. As we considered it a matter of public importance concerning the public safety as well as the particular safety of the train service employees, and in view of the foregoing statements of the President and yourself, we felt it to be our duty to take the matter up first with the President and the Department of Justice to enforce the Federal statutes before endeavoring to take any action ourselves. In conference with the President he pointed out that he was familiar with the dangerous conditions and called to our attention the fact that some months before he had cooperated in seeking to procure from Congress appropriate action to employ additional inspectors. He referred us to you, and in our discussion of the matter we pointed out to you the legal difficulties that would be met by the organizations bringing actions direct, whereas the Government would have little difficulty in maintaining a suit.

In this connection may we refer to a suggestion made by yourself at the close of our first conference, to the effect that as you had asked in person for a restraining order against the striking shopmen, fairness required you to personally present a request for an injunction and mandate against the railroads for violation of the safety statutes.

The letter of the 3d instant tacitly admits that the conditions are so bad that some action should be taken, and we feel there can be no further question that there is ample authority in law for the Attorney General to bring an action to compel compliance with the safety statutes. We can not accept as a well-considered opinion the statement in the letter of the 3d instant:

"To the Interstate Commerce Commission is committed the authority to enforce the laws relating to the use of defective equipment, etc."

The Interstate Commerce Commission, through the various district attorneys, can proceed to impose the statutory penalties for violations, but is given no other authority for enforcement. At this late date it is surely too well settled for discussion that the mere infliction of penalties might be an inadequate remedy; in fact, no remedy at all, and it certainly would be in this instance.

In that letter no question is raised as to the facts. At our last conference on the afternoon of November 1, you will recall that Mr. Hall, the assistant chief inspector of the bureau of locomotive inspection, was present at the instigation of Mr. McChord, chairman of the Interstate Commerce Commission. He brought with him the reports of the bureau of inspection which showed the condition of locomotives up to September 30, 1922, being for July, August, and September, the first quarter of the fiscal year 1923.

This report showed that while the number of defective locomotives for the last three months of the fiscal year 1922 averaged about 44 per cent, the defective locomotives in September, the last month for which they had a report, was 71 per cent. In the last three months of the fiscal year 1922 the inspectors had ordered out of service an average of about 240 locomotives per month, but in the month of September they ordered out of service 758 locomotives. This is the condition shown by the official Government reports, even though it is common knowledge that inspectors, recognizing the difficulties arising from the strike of the federated shopcrafts, had only ordered from service locomotives that were absolutely dangerous, and, in addition, railroads are frustrating the efforts of the inspectors.



The latest reports of the bureau of inspection overwhelmingly indicate that conditions are getting worse instead of better. This is particularly true of the western railroads. While we hesitate to inject into the question any mention of the strike of the federated shop crafts, it is true that on the western railroads there are scores of thousands of skilled employees who, if put to work, could quickly remedy the conditions complained of.

We are not directly concerned with that question, but the attitude of many railroads in refusing to reemploy these men unless they join labor organizations controlled by the railroads themselves, is having the inevitable result of continued deterioration of equipment. There is not the slightest doubt that these railroads are encouraged in their attitude by the Government policy of having enjoined that strike and then bringing criminal indictments against other employees who simply refused to continue with their usual employment out of consideration for their own safety and protection.

Our clients point out they have not and can not take any active interest in that strike, but they insist that something should be done by the Government to enforce compliance with the safety statutes, even if it should have the effect of compelling a change in the labor policy of the railroad managements.

We submit that the members of the organizations we represent should not be required to operate motive power and equipment that is in such a dangerous and deteriorated condition as to be a constant menace to their lives when there are laws requiring such equipment to conform to a certain safety standard; or, in the alternative, be compelled to face indictments for criminal conspiracy if they take any steps in their own interest. In this connection we have in mind your own statement that you would not take out equipment which you knew to be dangerously defective, but after our discussion of this statement with you we feel that when you made it you did not have in mind the position of the engineer and fireman who would be charged with criminal conspiracy and at the same time would be likely to lose their positions and seniority earned by long years of faithful service.

We can not concede that appropriate action by the Government to restrain further violations of the safety statutes would result in hindering the continuous movement of essential commodities, but, on the other hand, we are convinced that such action would quickly result in an improved condition of locomotives and better movement of commodities.

Respectfully submitted.

OSCAR J. HORN,

*Attorney for the Brotherhood of Locomotive Engineers.*

THOMAS STEVENSON,

*Attorney for the Brotherhood of Locomotive Firemen and Enginemen.*

Mr. RALSTON. Mr. Stevenson, you speak in your letter of men having been indicted—engineers and firemen—for having refused to put their own lives in jeopardy in the manner you have indicated. Who are they? Can you give any instances?

Mr. STEVENSON. That had reference to the conditions in the West—Barstow and Needles and various other points where trainmen refused to continue with the trains on account of the condition of the equipment and hired gunmen that they were required to ride with.

Mr. RALSTON. They were indicted for making those protests, indicted in the United States courts?

Mr. STEVENSON. They were indicted. The indictment charged them with conspiracy to interfere with the transportation of the mails and interstate commerce by reason of the fact that they had declined the service, declined to go ahead.

Mr. RALSTON. But the choice left to them was to expose themselves to the danger of being blown up or being indicted, one of those two, was it?

Mr. STEVENSON. Yes, sir; that in—we had every reason to think there would be more indictments following this indictment, if any more conditions similar to this had arisen, similar to the conditions at Barstow and Needles. In fact, we were told that they would follow.

Mr. RALSTON. As a practical question, are the men afraid to go off of the locomotives which they know to be dangerous because they fear indictment by United States authorities?

Mr. STEVENSON. We are so informed. As a matter of fact, the men on the Texas & Pacific Railway particularly, we are informed by the chairman of the workmen that down on that property there is an old injunctive order under these wonderful permanent injunctions issued in 1916. It was issued when the road went into the hands of the receiver, and this order was to prevent garnishment, attachments, interferences of property generally, by the Federal court, and they tell us that men are being held, haled into court charged with contempt of that injunctive order if they object to the conditions. Now, I have not been down there to investigate those charges, but I have been given a number of reports.

Mr. RALSTON. When is the most recent instance?

Mr. JEFFERIS (interposing). Just a moment. They have a receiver down there, do they not?

Mr. STEVENSON. Yes, sir.

Mr. JEFFERIS. And they are bringing them into court?

Mr. STEVENSON. Yes, sir; and also disciplining the men. The men have been disciplined.

Mr. JEFFERIS. Who appointed the receiver?

Mr. STEVENSON. The Federal court, I take it.

Mr. JEFFERIS. The judge down there?

Mr. STEVENSON. Yes, sir.

Mr. JEFFERIS. Have you ever taken it up with the judge?

Mr. STEVENSON. No; but we have asked the Attorney General to.

Mr. RALSTON. Has he done it?

Mr. JEFFERIS. The Attorney General controls the receiver; is that your idea?

Mr. STEVENSON. No, sir; our idea is that the Attorney General is charged with the duty of enforcing the safety statutes. If we had been informed that the Attorney General would not or will not do anything, I will say that long before this we would have been on that property and asked the court ourselves, but we think that as a matter of law we would have a great deal of difficulty. I know that there is a difference of opinion as to the law in the case. We think, as private individuals going in there, we are in a situation that is spoken of in the Attorney General's bills that we would have difficulty in enforcing this statute. It is a public matter, public statute. The non-observance of it creates a public danger and public nuisance and public offense, and it is his duty to enforce it, in our opinion.

Mr. JEFFERIS. I know, but there are several public officials. What I was figuring on is that you had a judge down there, and an attorney, district attorney, and had a receiver, also a public official, and others on the ground.

Mr. STEVENSON. This pertains to interstate commerce, and the Attorney General announced that it was his duty to enforce all rules and regulations in regard to interstate commerce, and we would like to get to the head of this.

Mr. BIRD. But finding the property in the hands of the receiver appointed by the United States court would change the situation somewhat, would it not?

Mr. STEVENSON. It would make it actually a lot easier, we think.

Mr. RALSTON. Has the Attorney General made any efforts to relieve the situation as to those roads which are in the hands of the receivers?

Mr. STEVENSON. We are not advised that the Attorney General has filed any action to date, if that is what you mean.

Mr. RALSTON. Yes. Do you know how many indictments are pending against your men for refusing to go out with defective engines and equipment?

Mr. STEVENSON. I am only advised of one, in Los Angeles, which comprises, I think, eight—I think that there are eight men under the one indictment.

Mr. FOSTER. Did you say that they were indicted because they refused to go ahead with defective engines? That is the question.

Mr. STEVENSON. I beg your pardon. Will you state the question again?

Mr. FOSTER. Read the question, please.

(Whereupon the reporter read the pending question.)

Mr. STEVENSON. Obviously, they are not.

Mr. HERSEY. Read the answer, too.

Mr. STEVENSON. I say obviously they were not indicted; the indictment was not based on the charge that they refused to go out with defective equipment.

Mr. RALSTON. It would not be expected that it would be that way?

Mr. FOSTER. But your question is framed that way.

Mr. RALSTON. I can frame the question in another way.

Mr. FOSTER. The reason I called your attention to it was that you stated that they were indicted for that purpose.

Mr. RALSTON. Yes. I will reframe the question, if necessary.

Do you know of any indictments for conspiracy to interfere in any way with interstate commerce where the acts committed were simply the refusal to proceed with defective equipment or defective boilers?

Mr. FOSTER. To answer that, Mr. Stevenson must know that the equipment was defective. I have enough faith in Mr. Stevenson to believe that he will not answer that question in that form unless he knew that the equipment was defective.

Mr. RALSTON. Where "they" knew the equipment——

Mr. FOSTER. He would have to know that way too, in order to answer.

Mr. RALSTON. All right, he can answer it. He is capable of answering it.

Mr. FOSTER. And you are capable of putting the question without having that element in it, I object for the reason that question implies on his part knowledge as to conditions that existed down in the southwestern part of the country.

Mr. RALSTON. He could state the source of his knowledge.

Mr. FOSTER. That would not be an answer to your question, if in fact he has no personal knowledge as to the conditions that exist down there.

Mr. STEVENSON. I do not want to argue the form of the question. It is a difficult question. I might state with regard to any indictments with reference to this matter, that there is one indictment, there was one indictment, I do not know whether the trial has been completed or not. There is in progress about a month ago or thereabouts, in which our organizations are charged with

conspiracy to interfere with the transportation of mails and interstate commerce, based on facts, from our standpoint, that they had refused to continue the operation of those trains by reason of the mechanical condition of them and the fact that they were required to ride with armed gunmen.

Mr. MICHENER. That covers the Needles case?

Mr. STEVENSON. Yes, sir.

Mr. MICHENER. That was the Needles indictment?

Mr. STEVENSON. Yes, sir.

Mr. MICHENER. And that is one indictment, and you do not have any more?

Mr. STEVENSON. So far as I am informed.

Mr. RALSTON. The fact of that indictment is, is it not, that it is well known among the engineers and firemen, including their organization?

Mr. FOSTER. Do you mean the facts, or the claims of those facts?

Mr. RALSTON. The facts as stated by him.

Mr. FOSTER. Well, he does not claim to state the facts; he says he is informed by these papers.

Mr. RALSTON. I say the facts as claimed in those papers.

Mr. FOSTER. In other words, you mean the statements as claimed to have been made in these papers?

Mr. RALSTON. Yes.

Mr. FOSTER. Now, I think we will get along better. I am going to insist upon that.

Mr. STEVENSON. The members all know the conditions because it has been printed in the Bulletin Magazine.

Mr. RALSTON. Do you know what influence that fact has had over the men?

Mr. BIRD. What facts do you have in mind—the riding of armed men on the trains?

Mr. RALSTON. No; the fact that they have been under indictment under the circumstances that have been stated. Has that fact had a deterrent effect upon the men in regard to quitting when their engines were in bad condition?

Mr. STEVENSON. That is the information that comes in from their meetings—that the men are deterred from leaving the service, and they are compelled to take out locomotives that they would otherwise object to, by fear of being indicted for criminal conspiracy.

Mr. RALSTON. How many times has that information come to you?

Mr. STEVENSON. That is difficult to answer. It comes in in letters from various chiefs and chairmen; I could not say; on several occasions, is all I can say—on several occasions that question has been brought up.

Mr. FOSTER. May I ask a question? I understood Chairman McChord to tell us about some actions that were recently prepared in the Interstate Commerce Commission and sent to some district attorneys. Do you know whether they proceeded to take care of this defective equipment? Do you know of any such proceeding?

Mr. STEVENSON. Yes, sir; recently. But I have discussed it with the department, and I have understood from members of the department that efforts were being made to push those matters by the Department of Justice.

Mr. FOSTER. I understand that suits have been prepared and placed in the hands of district attorneys?

Mr. STEVENSON. I was not informed of that, but I was informed that the Department of Justice was seeking to press the preparation of such——

Mr. FOSTER (interposing). And did you understand that a letter had gone out from the Attorney General to every district attorney in the United States, urging early action on those suits, and to accept no compromise? Were you informed of that?

Mr. STEVENSON. I was not informed of that until I heard it yesterday here.

Mr. RALSTON. Did you discuss with the Attorney General, on any of those occasions, the reason why a merely penal action would be ineffective?

Mr. STEVENSON. Yes.

Mr. RALSTON. Will you state to the committee why you informed the Attorney General that such an action or such a series of actions would be ineffective?

Mr. HERSEY. As one member of the committee, I object to letting everything in like this. There must be a limit somewhere.

Mr. RALSTON. This is part of his conversation with the Attorney General.

Mr. HERSEY. No; you asked him why he said that.

Mr. RALSTON. Well, if he told the Attorney General why—I will put it that way.

Mr. HERSEY. Well, you asked him why he told the Attorney General certain things.

Mr. FOSTER. And he changes that now?

Mr. STEVENSON. Now, I will have to ask you to read the question.

Mr. HERSEY. You will have to ask another question, Mr. Ralston.

Mr. RALSTON. All right. Did you tell the Attorney General why, in your opinion, a simple penal action against the railroads would of necessity be ineffectual?

Mr. STEVENSON. Yes, sir.

Mr. RALSTON. Please tell us what you stated to the Attorney General on that point?

Mr. STEVENSON. We stated that the collection of a money penalty would be no penalty for the railroads, because, no matter how many of them they collected, they would be reimbursed, by a proper arrangement of rates, and furthermore, that cases, of that character, in any number that would embarrass any property would, of necessity, naturally create such a long delay that the condition that we were complaining of could continue interminably, and we might lose hundreds of men while such suits were being brought to determination.

Mr. FOSTER. Well, this reimbursement, or change of rates, would that contemplate the Interstate Commerce Commission raising rates to allow them to make it up?

Mr. STEVENSON. I was asked what argument we made.

Mr. FOSTER. I know; but is there any other way to have the rates changed other than under the interstate commerce act?

Mr. STEVENSON. That is a pretty long way for me.

Mr. RALSTON. The Interstate Commerce Commission has to take into consideration, in fixing rates, a suitable return to the railroads, does it not?

Mr. STEVENSON. So I understand, under the law.



Mr. FOSTER. Do you understand that they take into consideration, in determining the earnings and returns to the railroads, the fines paid for violating Federal laws? Is that your understanding, that that is one element to take into consideration?

Mr. STEVENSON. But we were trying to press this thing to a conclusion.

Mr. FOSTER. Yes.

Mr. STEVENSON. We were trying to get something done.

Mr. FOSTER. I understand that.

Mr. STEVENSON. And we were trying to argue that the infliction of a fine on a railroad means nothing; that it would simply go into some part of their bookkeeping; the question was asked: Suppose we filed 20,000 suits against a railroad, and collected \$100 from each railroad on each offence?

Mr. FOSTER. You thought they would be juggling it in their books?

Mr. STEVENSON. Yes, sir, and still think so.

Mr. FOSTER. In other words, you did not have in mind that the Interstate Commerce Commission would be a party to it?

Mr. STEVENSON. No, sir—that the matter would be juggled around in the figures, and they would be reimbursed by a proper readjustment of rates. Of course, we were presenting our case; we wanted something done. That is where that argument arose. We did not want to argue that; we wanted something done.

Mr. RALSTON. On November 15, did you address a further communication to Mr. Daugherty?

Mr. STEVENSON. Yes. We had been discussing the general proposition, and now we came down to a specific railroad.

Mr. RALSTON (reading):

NOVEMBER 15, 1922.

Hon. H. M. DAUGHERTY,  
*United States Attorney General,*  
*Department of Justice, Washington, D. C.*

Re conditions of locomotives on Texas & Pacific Railway.

SIR: Referring to our numerous letters, telegrams, and conferences on the general subject of the violations of the safety statutes by the railroads of the United States, you will doubtless recall when the subject was first broached we were asked to name some of the railroads on which we considered conditions particularly dangerous. You will no doubt also recall that we immediately referred to the Texas & Pacific Railway Co., and the Denver & Rio Grande. We pointed out to you that communications were being received by the chief executives from the men on the Texas & Pacific to the effect that the danger was so great that the men were getting afraid to take out almost any locomotive. They were advised that the matter was being taken up by the proper governmental body and it was intimated that they would be given relief at an early date.

Five weeks have elapsed since we first took up this subject with the President and yourself, and while we have felt that we have overwhelmingly established the merit of our contention of the dangerous condition from the reports of the Bureau of Locomotive Inspection, and had also satisfied you that the Attorney General had authority to bring the necessary suit, yet we seem no nearer action, or even a definite conclusion as to whether or not the department intends to take any action, than we were five weeks ago.

A report dated November 1 of conditions on the Texas & Pacific has been received stating that the engines on that railroad are beginning to blow up. A few days prior to the date of this report engine No. 260 blew up at Shreveport, La., and on November 1 engine No. 275 blew up at Addis, La. Both were passenger engines handling passenger trains when they blew up. Fireman W. H. Stalcup, firing on engine No. 275, is in a serious condition, being scalded, burned, and badly broken up by the explosion. On Sunday, October 22, engine No. 317 was badly burned by the fire lighter firing



Mr. STEVENSON. They are just telegrams now.

Mr. RALSTON. We will be through very quickly, apparently. Did you receive a telegram from Mr. Daugherty, in apparent response to this letter?

Mr. HERSEY. Now, a motion is before this committee, Mr. Chairman, to insert the remaining letters in the record.

Mr. FOSTER. We are through with the bulk of them; why not finish this pile now?

Mr. STEVENSON. Well, we received a telegram dated November 22.

Mr. RALSTON (reading):

OSCAR HORN,

*Attorney of Brotherhood of Locomotive Engineers.*

THOMAS STEVENSON,

*Attorney for Brotherhood of Locomotive Firemen and Enginemen,*

*Cleveland, Ohio:*

Department is urging United States attorneys to prosecute vigorously violations of safety-appliance laws. Our final decision as to form of remedy we can pursue for alleged condition existing on Texas & Pacific and other railways depends entirely on the amount and character of the proof we are able to submit. We are compiling all proof now in hands of Interstate Commerce Commission. If you have facts forward them in form of affidavits at once.

What have you to say, Mr. Stevenson, with reference to this request of the Attorney General at that time for proof—and any interview that you may have had with him or his subordinates on the question of proof?

Mr. STEVENSON. On the question of proof—or affidavits of proof—we have suggested that we are not in a position to furnish affidavits in the same way as a railroad would. The suggestion was made that the railroad would furnish proof by bundles of affidavits; but that we could only do that at the expense of a man's job; that if we had a man make an affidavit, the railroads will pick on him, and that is the end of his job, and we can not afford to do that.

Mr. JEFFERIS. Mr. Chairman, that is not responsive, to any conversation with anybody.

Mr. STEVENSON. We have discussed that with the representative of the Attorney General's office.

Mr. MONTAGUE. Did you make a written or telegraphic response to that telegram? He asked you to supply affidavits. Did you make a written reply to that?

Mr. STEVENSON. No; we did not; it had not any specific reference to any specific thing. We did not know why that suggestion was made in there, because we had discussed the question with the department. There is also in one telegram a reference to affidavits from Mr. Lovell which was really not understandable to me at all; but I know who Mr. Lovell is, and what affidavits he might be able to furnish.

Mr. MONTAGUE. I do not want to cut off any oral testimony, but I thought while we were on the written testimony, we could go through with that, and then you could go on with your oral testimony.

Mr. STEVENSON. No, sir; there was no written response to that.

Mr. JEFFERIS. You did not furnish the Attorney General any affidavits or proof that would help him out?

Mr. STEVENSON. No, sir. But orally we have suggested that, when the Attorney General does take action, we will furnish the names of the witnesses, and if they will subpoena the men and protect our men, we will see that they give evidence.

Mr. JEFFERIS. You have told him that?

Mr. STEVENSON. Yes.

Mr. RALSTON. You have also called attention to the fact of the existence of proof in the Interstate Commerce Commission?

Mr. STEVENSON. We have contended that all necessary proof was in the Interstate Commerce Commission—for a prima facie case.

Mr. RALSTON. I find a short telegram of November 23, as follows:

NOVEMBER 23, 1922.

Hon. H. M. DAUGHERTY,  
*Attorney General, Department of Justice,*  
*Washington, D. C.:*

Since our last communication engine No. 355, on Texas & Pacific, exploded November 21, and engineer and fireman injured. Note that you are filing proof in hands of Interstate Commerce Commission and that you asked for affidavits of our men. As we told you when there, our men would lose their positions if they made affidavits, and your Mr. Hayes said you would get along without them. The Bureau of Locomotive Inspection has abundant proof, and it is the best evidence, as it is Government records.

We must have relief, and if you can not move quicker we shall have to apply ourselves, although it makes it much easier for such a move by your department. How many more explosions and injuries to our men are we going to have before we get your final decision?

(Copy to President.)

OSCAR J. HORN.  
THOMAS STEVENSON.

Mr. BIRD. Mr. Chairman, I would like to ask, right at that particular point, how the percentage of blowups of engines during that time compared with any other time—a prior or a normal time?

Mr. RALSTON. Mr. Stevenson, perhaps, can answer that, or another witness that we have to-day.

Mr. STEVENSON. I can not answer, as a matter of figures; but as a matter of fact, just at that time we had a number of them. We had one at Corning, N. Y., where in a double header, the second locomotive of the double header exploded the boiler: this boiler passed—the train was moving 20 miles an hour, and the boiler left the train and moved ahead, over the top of the first locomotive, and dropped on the tracks. It killed four men and very seriously injured seven.

We had another one that exploded at Tarrytown, N. Y., and part of that locomotive was blown a mile and set fire to some buildings.

Mr. BIRD. That is not answering the question. Let me ask you this question, and see if you can answer it: Is not the blowing up of an engine by reason of mud, or accumulation on the crown sheet—is that not incidental to railroading at all times?

Mr. STEVENSON. Not if the law is complied with; no, sir; emphatically not.

Mr. BIRD. Now, going back to my first question: How does the percentage compare with the percentages of previous times?

Mr. STEVENSON. My same answer stands; I have not the figures as to percentages, but I was telling you that at that particular time——

Mr. BIRD (interposing). You were saying it was much greater?

Mr. STEVENSON. Yes, sir.

Mr. RALSTON. We will furnish a witness on that point. Will you give all the information you can, Mr. Stevenson, with reference to the explosion that you referred to, or the explosions that you referred to

specifically in the questions I have asked you—on the Texas & Pacific?

Mr. JEFFERIS. Now, the fact that they have taken place seems to be as much as we ought to have here, Mr. Chairman. I object to going into all of those details.

Mr. RALSTON. There may be very important details connected with this. If these engines went out against the protests of the firemen and engineers, that is quite an important detail, it seems to me.

Mr. FOSTER. Mr. Ralston, would you be willing to have him go ahead and give all of these facts that were discussed with the Attorney General?

Mr. RALSTON. I will ask him that question.

Mr. FOSTER. All of those features.

Mr. RALSTON. With the Attorney General or the Attorney General's representatives?

Mr. FOSTER. In other words, he is asking you to give him details of the circumstances connected with this explosion.

Mr. STEVENSON. I am afraid I can not do that.

Mr. FOSTER. You did not go into those details with the Attorney General?

Mr. STEVENSON. No, sir.

Mr. RALSTON. Did you go into them with representatives of the Attorney General?

Mr. STEVENSON. No, because we were not furnished with the details.

Mr. RALSTON. Well, did you go into the "high lights?"

Mr. STEVENSON. Yes, we touched the high spots.

Mr. RALSTON. Well, will you give the committee the high lights which you did go into with the Attorney General?

The CHAIRMAN. It is now 10 minutes of 12. We will take a recess until 1.30 o'clock.

(Thereupon a recess was taken until 1.30 o'clock p. m.)

DECEMBER 14, 1922.

AFTER RECESS.

The committee reconvened pursuant to the taking of the recess.

The CHAIRMAN. We are ready to proceed.

#### TESTIMONY OF MR. THOMAS STEVENSON—(resumed.)

Mr. RALSTON. I think, Mr. Chairman, I have no further questions to ask Mr. Stevenson; but the members of the committee may have.

Mr. THOMAS. I want to ask Mr. Stevenson a question, Mr. Chairman. Mr. Stevenson, who was this receiver, this Federal receiver, you spoke of, that violated this safety appliance law?

Mr. STEVENSON. The one we spoke of, I think, was on the Texas & Pacific Railroad; it particularly applies to the receiver of that road, and also to the receiver of the Denver, Rio Grande & Western.

Mr. THOMAS. When did the inspector make a report that he had violated the law?

Mr. STEVENSON. Recently; say, within the last month or so.



Mr. THOMAS. Within the last month or so. Was that the first report that had been made of any violation of this law by the inspectors?

Mr. STEVENSON. No, sir; the inspectors have been reporting violation of the law generally.

Mr. THOMAS. For how long?

Mr. STEVENSON. Since August.

Mr. THOMAS. Since last August?

Mr. STEVENSON. During the month of August and subsequently thereto.

Mr. THOMAS. These reports were made to the Interstate Commerce Commission, were they not?

Mr. STEVENSON. Yes, sir.

Mr. THOMAS. Do you know whether they were called to the attention of the Attorney General, wholly, or in part?

Mr. STEVENSON. My information on that, of course, is only secondary knowledge, but I understand not; that the reports were not specifically brought to the attention of the Attorney General until we did it in October.

Mr. THOMAS. What day in October was that; I have forgotten.

Mr. STEVENSON. The 11th.

Mr. THOMAS. The 11th. Has any action ever been taken by the Attorney General, or any of the district attorneys, in regard to that matter?

Mr. STEVENSON. No legal action whatever has been instituted along the lines we have been requesting.

Mr. HERSEY. You say "no action along the lines you have suggested." Has there been any action taken whatever along any lines?

Mr. STEVENSON. By Department of Justice representatives?

Mr. HERSEY. Yes.

Mr. STEVENSON. When I say no action, I mean no legal action.

Mr. FOSTER. On the question of penalties incurred. Has there been any action brought on the equity side?

Mr. STEPHENSON. Not to my knowledge. I do not believe there has been a suit brought for that—a suit filed to recover the penalty.

Mr. HERSEY. You do not know what the Attorney General, or the district attorneys have done?

Mr. STEVENSON. I know 10 days ago they had not filed a suit. I do not know what they have done up to this minute, but I know 10 days ago they had not filed a suit.

Mr. HERSEY. In what district would that be, that violation?

Mr. STEVENSON. All over the districts.

Mr. HERSEY. Oh, no; a violation happened in some district, or in some circuit.

Mr. STEVENSON. There are violations that have been reported, I expect.

Mr. HERSEY. I am speaking of this one called to your attention by Mr. Thomas, where a receiver was appointed. In what district was that; in what place was that?

Mr. STEVENSON. I do not know where the jurisdiction resides, whether in Shreveport, Dallas, or New Orleans.

Mr. HERSEY. Do you know whether any action has been commenced down there?

Mr. STEVENSON. I do not

Mr. HERSEY. Or whether the papers have been sent to the district attorney down there?

Mr. STEVENSON. I do not.

Mr. RALSTON. Have you any reason to believe they have been?

Mr. STEVENSON. No, sir.

Mr. RALSTON. Are you in such a position that you would be likely to know if there had been anything done?

Mr. STEVENSON. I am not in a position to know if any action has been taken for the collection of penalties. I rather think if any other, different, action has been taken, the attorneys of the department would have called upon us to bring forward what we promised to do.

Mr. FOSTER. You have learned, since coming here that the chairman of the Interstate Commerce Commission claims suits have been sent to the district attorneys to be filed on the penalty feature? You have heard that since you have come here?

Mr. STEVENSON. Yes, sir; I have, in the testimony.

Mr. FOSTER. And that in connection with that the Attorney General had written all district attorneys to be prompt in those suits?

Mr. STEVENSON. Yes, sir; I have heard that.

Mr. FOSTER. Since you came here?

Mr. STEVENSON. Yes, sir.

Mr. THOMAS. You had proof of these violations when the inspectors filed the reports; that was proof of the violation, was it not?

Mr. STEVENSON. Yes, sir.

Mr. FOSTER. That was left with the Interstate Commerce Commission?

Mr. STEVENSON. There seems to be some difference of opinion on that.

Mr. FOSTER. Is there any difference of opinion that those are always filed with the Interstate Commerce Commission?

Mr. STEVENSON. The inspection reports?

Mr. FOSTER. Yes.

Mr. STEVENSON. They are always filed with them.

Mr. FOSTER. You know of no provision of law for their being filed with the Attorney General?

Mr. THOMAS. I never said there was any provision of law for filing them with the Attorney General.

Mr. FOSTER. I did not say you did. Do you know of any law or custom that they are to be filed with the Attorney General's office?

Mr. STEVENSON. These general inspection reports of the locomotive inspectors?

Mr. FOSTER. Yes.

Mr. STEVENSON. Not that I know of.

Mr. RALSTON. Do you know when the Attorney General first called on the Interstate Commerce Commission for those inspection reports, if he has called for them?

Mr. STEVENSON. No; I do not.

Mr. RALSTON. Can you approximate it? Have you any way of knowing?

Mr. BIRD. He says he does not know.

Mr. STEVENSON. I do not know when he called for them; I do not know when he called on the Interstate Commerce Commission. I do know that on November 1 or 2 we had the assistant chief inspector in the Attorney General's office with his records.

Mr. GOODYKOONTZ. The Attorney General now has one of his assistants in the offices of the Interstate Commerce Commission giving this matter personal and individual attention?

Mr. STEVENSON. Yes, sir.

Mr. GOODYKOONTZ. Do you know how long that has been the case?

Mr. STEVENSON. I have known—let me see if I can fix the date—I think we learned somewhere along toward the end of November—it was a day or two before Thanksgiving—that I knew he was located over there and he had done sufficient work to inform me he had been over there a week or 10 days.

Mr. GOODYKOONTZ. Thank you, sir.

Mr. STEVENSON. And members of the department also informed me, over there, members of the inspection department, that he had been there.

Mr. JEFFERIS. Mr. Howland, do you want to interrogate the witness?

Mr. HOWLAND. Yes; if Mr. Ralston is through.

Mr. JEFFERIS. I thought we were through.

Mr. RALSTON. Yes; I turned the witness over to the committee for examination.

Mr. HOWLAND. When?

Mr. RALSTON. Ten minutes ago, and so stated.

Mr. HOWLAND. Now, Mr. Stevenson, I am going to be very brief. I only want to clear up one or two matters. On October 10, you presented—you and Mr. Horn presented—your case to the President of the United States on behalf of the respective brotherhoods that you represent.

Mr. STEVENSON. It was either the 10th or the 11th; it was on Wednesday.

Mr. HOWLAND. You had prepared a full statement to take to the President?

Mr. STEVENSON. Yes, sir.

Mr. HOWLAND. And you asked an audience with the President, and he gave it to you?

Mr. STEVENSON. Yes, sir.

Mr. HOWLAND. And immediately after you had stated your position did he express himself in regard to the merits of your complaint in a general way?

Mr. STEVENSON. Yes, sir.

Mr. HOWLAND. What consideration did he give it—friendly or otherwise?

Mr. STEVENSON. Very friendly.

Mr. HOWLAND. And what did he do with reference to referring you to other departments of the Government to take up the matter? Did he send you to the Attorney General?

Mr. STEVENSON. Yes, sir; forthwith.

Mr. HOWLAND. Right away?

Mr. STEVENSON. Yes.

Mr. HOWLAND. And the Attorney General immediately gave you an audience?

Mr. STEVENSON. Yes, sir.

Mr. HOWLAND. And what was his treatment of your complaint? Was it friendly or otherwise?

Mr. STEVENSON. Very friendly.

Mr. HOWLAND. Was it considerate and interested?

Mr. STEVENSON. Yes, sir.

Mr. HOWLAND. Did he not express to you his willingness to use every power of the Government, assuming that your facts were accurate, to correct the condition which you claimed existed?

Mr. STEVENSON. Yes, sir.

Mr. HOWLAND. From that time down to the present moment you have been in telegraphic communication, letter communication, and in personal conference at various times with the Attorney General, the Interstate Commerce Commission, and various parties having special charge of this matter for investigation?

Mr. STEVENSON. Yes, sir.

Mr. HOWLAND. And Mr. Horn?

Mr. STEVENSON. Yes, sir.

Mr. HOWLAND. The matter is still being investigated in the Department of Justice, is it not?

Mr. STEVENSON. To the best of my knowledge and belief; yes, sir.

Mr. HOWLAND. And your relations, and the relations of Mr. Horn, with the Attorney General's office are of the most friendly character up to this time?

Mr. STEVENSON. Yes, sir.

Mr. HOWLAND. And do you not believe—I am going to ask you this question because you have expressed opinions here—that the Attorney General is ready, willing, and anxious to assist you in every way within his power to get the relief that you ask for?

Mr. STEVENSON. I have no reason to think otherwise.

Mr. HOWLAND. Now, with reference to the Texas & Pacific, which is in the hands of the receiver, and one other road, the Denver & Rio Grande, those roads are in the hands of receivers, and, to your mind, do they not present a little different case from a legal standpoint than the case of a road which is not in the hands of a Federal receiver, in applying this law?

Mr. STEVENSON. I think the remedy would be, we have thought the remedy would be, of a different nature and different form; yes.

Mr. HOWLAND. Now, those are roads which have, not as yet settled with their striking shopmen?

Mr. STEVENSON. So I understand.

Mr. HOWLAND. And the condition on those two roads, probably, is more acute than on others?

Mr. STEVENSON. Well, there are roads in private management on which the conditions are just as acute as they are on those two roads.

Mr. HOWLAND. Are you able to tell us now with reference to the repair department, say, locomotive repair—and what is the other technical subject—are you able to tell us, Mr. Stevenson, the number of employees in the Texas & Pacific road last June, in the locomotive repair department.

Mr. STEVENSON. No, sir.

Mr. HOWLAND. Are you able to tell us the total number of men in the car repair department last June?

Mr. STEVENSON. No, sir.

Mr. HOWLAND. Do you know what the number of men was in the locomotive department on October 31, this year?

Mr. STEVENSON. No, sir.

Mr. HOWLAND. And the number of men in the car repair department on that same date?

Mr. STEVENSON. No, sir. Those figures are all available through the Bureau of Statistics of the Interstate Commerce Commission.

Mr. HOWLAND. Oh, yes; that is where I am getting these figures.

Mr. STEVENSON. Yes, sir. I have not been after them.

Mr. HOWLAND. If the figures, Mr. Stevenson, should demonstrate from this authoritative source that there are 222 more men now in these two departments in the Texas & Pacific road, than there were last June, previous to this strike, would you not say that that department was in a great deal better shape than it was even last June before this strike?

Mr. STEVENSON. No, sir.

Mr. HOWLAND. In other words, the number of men in a department is no evidence of the efficiency of the department; is that the idea?

Mr. STEVENSON. Under present circumstances, it is not.

Mr. HOWLAND. Yes, I see.

Mr. STEVENSON. Yes, sir.

Mr. HOWLAND. With strike conditions still existing?

Mr. STEVENSON. Yes, sir. I would like to make a little explanation of that, if I may.

Mr. HOWLAND. Certainly.

Mr. STEVENSON. That there is a report of the bureau which practically convinces that particular property, the Texas & Pacific, of not making a reasonable effort; because it shows in one particular shop they had 15 locomotives that were in there the 1st of July, and, I believe, on either the 15th or 30th of October, the identical locomotives were still in the same shop, and had not been touched.

Mr. HERSEY. What bureau are you speaking about?

Mr. STEVENSON. The Bureau of Locomotive Inspection in the Interstate Commerce Commission.

Mr. HOWLAND. I do not care to go into a discussion of whether the mandatory injunction is a proper remedy or not, Mr. Stevenson; that is a matter on which even you and the Attorney General might differ, I suppose you will concede?

Mr. STEVENSON. Yes, sir.

Mr. HOWLAND. But let me ask you what you would hope to accomplish by a mandatory injunction, in addition to the fact that you stopped defective engines on all the roads of the United States from running?

Mr. STEVENSON. We believe that the United States Government is clothed with sufficient power to compel the railroads in interstate commerce to use proper means to keep its ways open and in use.

Mr. HOWLAND. Yes.

Mr. STEVENSON. We believe that the United States Government would not be helpless in a position where, if the railroad has a large percentage of its locomotives defective and ordered out of service, that it could put them on a sidetrack and say, "Well, gentlemen, you have shut our road up." We do not believe in such a situation the United States is helpless.

Mr. HOWLAND. Yes; and by a mandatory injunction, Mr. Stevenson, I am quite willing to concede your proposition that the United States is not helpless; but by a mandatory injunction, you, as the representative of your organization, would not even concede the power to the United States Government to compel your men to work by a mandatory injunction?



Mr. STEVENSON. True; I concede that.

Mr. HOWLAND. Now, then, I ask you: By a mandatory injunction, what do you accomplish except the order refusing to allow the defective engine to run in the service?

Mr. STEVENSON. The mandatory injunction that we asked for was that the railroads be prevented, or enjoined, from offering to our men equipment that had not been inspected and had not been washed out, and had not been tested in compliance with the law.

Mr. HOWLAND. Exactly; yes. And, if they did, then the mandatory injunction would prevent the running of that particular locomotive?

Mr. STEVENSON. Yes, sir.

Mr. HOWLAND. Now, do you not understand that the present law, the boiler-inspection act, gives to the deputy inspector who makes the inspection the very power that you are contending for in your mandatory injunction?

Mr. STEVENSON. I do not believe the law does any such thing.

Mr. HOWLAND. I am reading, Mr. Stevenson, from the testimony. Did you hear Mr. McChord's testimony here yesterday?

Mr. STEVENSON. Yes, sir.

Mr. HOWLAND. You heard him state, substantially, what I am stating now, that the bureau of inspection had the right to order a defective locomotive out of service?

Mr. STEVENSON. That is true, under the law.

Mr. HOWLAND. Yes; that is what I asked you, was it not?

Mr. STEVENSON. I did not so understand it.

Mr. HOWLAND. Well, I was very awkward in my statement.

Mr. STEVENSON. Perhaps I misunderstood you, sir.

Mr. HOWLAND. Yes. There is power now in the Bureau of Inspection of the Interstate Commerce Commission to order defective locomotives out of service?

Mr. STEVENSON. Yes, sir; I think so; but——

Mr. HOWLAND. Wait a minute. You have already testified here to a large number that have been ordered out of service?

Mr. STEVENSON. Yes, sir.

Mr. HOWLAND. Within recent times, by your bureau?

Mr. STEVENSON. Yes, sir.

Mr. HOWLAND. Now, then, assume there are sufficient inspectors to inspect the motive power of these different railroads so that they can pronounce this locomotive defective and not fit for service, and, if the railroads attempt to use it, order it out of service. Have you not accomplished your remedy you are asking for by the mandatory injunction?

Mr. STEVENSON. The supposition, sir, would comply with the law, if your supposed question were complied with—if there were enough inspectors to see they were inspected, there would be no trouble. That is all we are asking.

Mr. HOWLAND. That is it, exactly.

Mr. STEVENSON. But it does not follow for a minute that every locomotive that was inspected would be ordered out.

Mr. HOWLAND. Your position is very fair; I am not criticizing your position.

Mr. STEVENSON. Yes, sir.

Mr. HOWLAND. You are not contending, and your order is not contending, a technically defective locomotive should be ordered out of service, as I understand it?

Mr. STEVENSON. That is true, sir.

Mr. HOWLAND. It is the dangerously defective one?

Mr. STEVENSON. Yes, sir.

Mr. HOWLAND. Now, if you had the inspectors to enforce the law, you could accomplish just what you are contending for by putting the defective locomotives, dangerously defective locomotives, out of service?

Mr. STEVENSON. The question is so framed that it does not reach my thought on what we are asking for.

Mr. HOWLAND. I will not press it now.

Mr. STEVENSON. I would like to explain just what it was, if I may.

Mr. HOWLAND. Certainly.

Mr. STEVENSON. It is the failure to inspect which makes it necessary for our men to take out a locomotive without knowledge of its condition, which puts him on a box of something which is worse than nitroglycerin, and makes him take that out with his eyes shut as to his danger, and go along never knowing when that thing may blow up and finish his existence.

Mr. HOWLAND. Now, you found the Attorney General, the President of the United States, and every subordinate in sympathy with you in trying to remedy this situation, did you not, Mr. Stevenson?

Mr. STEVENSON. Yes, sir.

Mr. HOWLAND. You have, so far?

Mr. STEVENSON. Yes, sir.

Mr. HOWLAND. Now, then, these inspectors: Do you happen to know that a great many of these inspectors who are fully performing their duties to the extent of their ability—that a great many of them belong to the railroad brotherhoods, representing railroad men—these men in the Government service?

Mr. STEVENSON. I have reason to believe so; I have no personal knowledge, but I have reason to believe so.

Mr. HOWLAND. Is it not common knowledge among you men who are posted on labor matters that 50 per cent at least of the employees in the inspection service of the Government are men in good standing with the various Government organizations to which they belong?

Mr. STEVENSON. No, sir; it may be 90 per cent, but as far as my knowledge is concerned I have no idea.

Mr. HOWLAND. You know it is a fairly decent proportion, do you not?

Mr. STEVENSON. I would not be at all surprised if it is 90 per cent. I have no knowledge. If I knew I would say "yes," but I have no knowledge.

Mr. HOWLAND. Aside from these technical matters of art; with regard to specification No. 4, of the articles of impeachment by Mr. Keller, I want to ask you, Mr. Stevenson, when you first learned that articles of impeachment had been filed against the Attorney General of the United States?

Mr. STEVENSON. I do not know when that would be, sir. It was when I saw it in the newspapers.

Mr. HOWLAND. You had no part in any way with the preparation of No. 4?

Mr. STEVENSON. None whatever.

Mr. HOWLAND. And these articles of impeachment against the Attorney General are not now, and never have been, part of the procedure adopted by you and your organization to accomplish the relief which you are praying for at the hands of the Attorney General?

Mr. STEVENSON. I have not read the specification to this minute.

Mr. BIRD. That does not answer the question.

Mr. STEVENSON. No, sir. I thought that would be conclusive. I have not read the specification to now; I have never read any of the specifications.

Mr. HOWLAND. You are compelled, of course, as all lawyers are, to take the statement of facts from your clients?

Mr. STEVENSON. Yes, sir.

Mr. HOWLAND. You have no personal knowledge except as these matters are reported to you by your clients, in whom you have confidence, of course?

Mr. STEVENSON. That is true; yes, sir.

Mr. HOWLAND. I think I understood you to say that on a request for information on which to file, or base, or prosecute a possible complaint, a request for affidavits sent to you, under date of November 22, the following letter was addressed to you from the Attorney General's office:

Department is urging United States attorneys to prosecute vigorously violations of safety-appliance laws.

This is a telegram; I see the word "stop" here.

Our final decision as to the form of remedy we can pursue of alleged condition existing on Texas & Pacific and other railways depends entirely on the amount and character of the proof we are able to submit. We are compiling all proof now in hands of Interstate Commerce Commission. If you have facts, forward them in form of affidavits at once.

Now, Mr. Stevenson, have you furnished the department any affidavits or facts capable of legal proof in support of the allegations which you have embodied in your letter to the President, or which would prove and substantiate the bill of complaint along the lines of a mandatory injunction or any other petition?

Mr. STEVENSON. I think we have; yes, sir.

Mr. HOWLAND. In what way; by a reference?

Mr. STEVENSON. By reference.

Mr. HOWLAND. By referring the United States attorney to the records and files in the Interstate Commerce Commission?

Mr. STEVENSON. By bringing to the Attorney General's office the report of the conditions.

Mr. HOWLAND. From the bureau?

Mr. STEVENSON. Yes, sir; that is what the bureau is for.

Mr. HOWLAND. From the Bureau of the Interstate Commerce Commission?

Mr. STEVENSON. Yes, sir.

Mr. HOWLAND. The Interstate Commerce Commission Bureau of Inspection?

Mr. STEVENSON. Yes, sir. What better proof could we have than that—the governmental reports?

Mr. JEFFERIS. That was all you did, was it?

Mr. STEVENSON. We have gone further than that.

Mr. HOWLAND. Yes; I was about to ask you, what have you furnished in the shape of legal and competent evidence to the department, except to refer the department to a coordinate department—or perhaps I will not fix the rank?

Mr. STEVENSON. We took in the report of the department.

Mr. HOWLAND. Exactly; you took that in?

Mr. STEVENSON. But, outside of that, we have offered an apology or an excuse, if we put our men on record in affidavits that, from experience, our men will be victimized by the road; but I offered to the department that if they would go down or instruct their own district attorney there, either Mr. Horn, myself, or both of us, would go to the point where they would proceed and we would undertake to furnish them with the names of our men who have complained and in whom we have confidence they could substantiate their statements, and they could subpoena the men and they would be compelled to testify and would be protected under the Government subpoena.

Mr. HOWLAND. In other words, you pleaded an alibi there, did you not, Mr. Stevenson?

Mr. STEVENSON. No; we——

Mr. HOWLAND. You pleaded an alibi and the net result of the request for legal evidence to support your claim has been nothing except the statement that if the Attorney General would go down and investigate, you would furnish him the names at that time of somebody. That is as far as you have gone, is it not?

Mr. STEVENSON. No; it is a meritorious position that our clients feel they have taken in defense of their men.

Mr. HOWLAND. I am not quarreling with that.

Mr. STEVENSON. I admit, sir, I have not submitted any signed affidavits of any of our men on any of these propositions and on specific refusal of the clients, because their experience is that when their members do those things they are victimized.

Mr. HOWLAND. Exactly.

Mr. STEVENSON. We admit that, sir.

Mr. HOWLAND. Yes. Now, on November 25—Mr. Horn, I see, is the one to whom this is addressed. You won't take any exception to that, will you, sir?

Mr. STEVENSON. None whatever.

Mr. HOWLAND. You have been working together?

Mr. STEVENSON. Yes, sir; a joint matter.

Mr. HOWLAND (reading):

Rush names of witnesses and affidavits, if possible, as to acts mentioned in your wire November 24. We have force at work compiling proof to be used at earliest possible moment. Has Mr. Lovell procured any affidavits in accordance with understanding at our conference here?

Now I understand you to answer the question, responsive to this telegram and the previous telegram, that you have not furnished any sworn affidavits on the subject referred to in your communication of the previous date, confining your answer to affidavits which you have not furnished. Have you furnished any statements of witnesses, whether sworn to or not?

Mr. STEVENSON. No, sir. I do not recall that that has been requested.

Mr. HOWLAND. No.

Mr. STEVENSON. It has been the basis that they wished legal proof in the nature of , seeing that no action is

commenced, you can appreciate our men—suppose no action were commenced and we had these men make affidavits, what would the position of the men on the road be?

Mr. HOWLAND. I understand there is some friction there.

Mr. STEVENSON. Yes.

Mr. JEFFERIS. Do you figure the Attorney General would show those to the railroads?

Mr. STEVENSON. Oh, I would not say that, sir; but those things get out.

Mr. MICHENER. They might be brought out in a proceeding of this kind.

Mr. STEVENSON. Those things get out. I would not say he would deliberately go and show them to the railroad for the purpose of victimizing these men; I would not want to say anything like that or that would be construed that way, but they would get out.

Mr. HOWLAND. I suppose, on that point, you had the assurance of the department they would be treated confidential?

Mr. STEVENSON. Yes, sir; that is right.

Mr. HOWLAND. Now, Mr. Stevenson, have you drawn any bill? We would like to know, we practicing lawyers, just how you would do that. Did you prepare any bill in equity; at the time you appeared here and demanded a mandatory injunction in equity, did you have a bill prepared?

Mr. STEVENSON. That is just like the question of whether we briefed the law.

Mr. HOWLAND. Did you prepare a bill?

Mr. STEVENSON. I will have to answer this way: We did not feel called on to furnish the law or the pleadings in a case of this kind.

Mr. HOWLAND. I quite understand; I just wanted to know how far you had gone.

Mr. STEVENSON. No, sir; we did not prepare a bill.

Mr. HOWLAND. Leaving the formal parts out of a bill in equity, would you be willing to state, in a general sort of way, what prayers you would attach to the bill; what relief you would pray for in a bill?

Mr. STEVENSON. We would pray that a defendant railroad be enjoined from then and thereafter using or offering for use locomotives that had not been inspected and found to comply with the provisions of the safety statutes and the regulations that had been promulgated thereunder by the Interstate Commerce Commission and other departments that have to do with it.

Mr. HOWLAND. Yes.

Mr. STEVENSON. That was the general thought.

Mr. HOWLAND. From your information, having prayed for that relief and assuming that your prayer was granted, what percentage of the rolling stock of the railroads of the country—of the locomotives; not rolling stock—would that tie up immediately on November 1, when you first brought this to the attention of the Attorney General?

Mr. STEVENSON. I have no means of knowing what percentage of the locomotives were not being inspected. During the early months, in that exhibit that was brought in here, in the early months of the spring, after the men had gone on strike, we had been informed and understand through the bureau and from our own men that there were thousands of violations (that it was wholesale) of certain of the requirements of the Interstate Commerce Commission, and



about the time that we came first to the Attorney General we learned through the bureau that that particular where the railroads were failing to send in their reports of inspections was being greatly remedied quickly; that through the instrumentality of the bureau itself they were insisting on the road least furnishing these inspections. Then the complaint was made in the bureau that a lot of those inspection reports being made were spurious, or were being made by incompetent men—men who, as a matter of fact, knew nothing whatever about a boiler or locomotive—and it was admitted in the bureau.

Mr. HOWLAND. Now, can you come back to my question, if you are able to answer it?

Mr. STEVENSON. No, sir; I can not say what percentage of the motive power of this country was being dispatched without inspection. I do not know.

Mr. HOWLAND. You do not know?

Mr. STEVENSON. No, sir.

Mr. SUMNERS. Just a minute: You mean both inspection and, in the course of the ascertainment, that the locomotive is in first-class condition?

Mr. FOSTER. No; his prayer would cover all that.

Mr. SUMNERS. I would like to have the witness answer that.

Mr. STEVENSON. Probably, if I were drawing the bill, I would make two prayers.

Mr. SUMNERS. I am not discussing the prayers. What I am asking is this: You say they are sending out locomotives that have not been inspected?

Mr. STEVENSON. Yes, sir.

Mr. SUMNERS. I gather the purpose of the inspection is to ascertain that the locomotive is in good condition?

Mr. STEVENSON. Yes, sir.

Mr. SUMNERS. Does that mean free from defect or that the general average condition is such that it would be pretty safe to make a certain run?

Mr. STEVENSON. It is on the general average. The bureau have a standard; under certain defective conditions, they let a locomotive go out.

Mr. SUMNERS. That is what I thought.

Mr. STEVENSON. But it is only when a locomotive is ready to fall down in its tracks, you might say, that they order it out of service. When it is absolutely unsafe for a man to take it out, then they order it out of service.

Mr. SUMNERS. Exactly.

Mr. FOSTER. Your prayer would be to prevent the use of any locomotive that had not been inspected, would it not—coming back to the prayers of the petition?

Mr. STEVENSON. That had not been inspected in conformity with the act?

Mr. FOSTER. Yes; if it were only 2 per cent defective, would you not think the prayer would be granted?

Mr. STEVENSON. Yes, sir.

Mr. BIRD. Do you refer to the Government inspection?

Mr. STEVENSON. No, sir; not necessarily.

Mr. BIRD. To an inspection.

Mr. STEVENSON. To an inspection, as provided by the act.

Mr. BIRD. As provided by the act?

Mr. STEVENSON. Yes, sir; or by the regulations that have been promulgated under the act.

Mr. BIRD. That is a Government inspection?

Mr. STEVENSON. No, sir; excuse me, sir; I said last night, when I was testifying, that you did not understand the boiler inspection act, from the way it had been portrayed here; it had not been portrayed in such a way you could understand it.

Mr. HOWLAND. Without going into that detail, you are not able to tell us as to the percentage effect the granting of the prayer of your bill would have in reducing the motive power of the railroads?

Mr. STEVENSON. No, sir.

Mr. HOWLAND. Now, assuming it would put out of business 90 per cent of the motive power of the railroads of the country (this is for the purpose of illustration), you would not apply for a bill in equity that would put out of commission 90 per cent of the motive power of this country, would you?

Mr. STEVENSON. I do not think it is a fair assumption, sir.

Mr. HOWLAND. It is not a fair assumption?

Mr. STEVENSON. No, sir.

Mr. HOWLAND. I am leading up to this: Now, then, you did not have the information to give to the Attorney General as to the practical effect on this country, its business and its life, of adopting the course of procedure that you suggested, and all in the world he is doing now is to use every bit of power he has got to ascertain the exact situation in regard to that very matter? Don't you think that is a fair statement?

Mr. STEVENSON. Yes, sir; but on this 90 per cent, I do not think that is a fair picture.

Mr. HOWLAND. Oh, no; I just did that for purposes of illustration.

Mr. STEVENSON. And it is not a fair picture, then?

Mr. HOWLAND. It is not a fair picture, no.

Mr. STEVENSON. Let me say this: On the Denver & Rio Grande, for instance, as I recall the figures—you have them before you——

Mr. HOWLAND. Yes.

Mr. STEVENSON. Of the locomotives inspected by the Government inspectors from somewhere in October to November 15, we will say, the last inspection made, the locomotives were about 90 per cent defective. Now those locomotives are being offered to our men for use, and yet they are found 90 per cent defective. I do not know how many have been ordered out of service in that period. Probably they have 20—20 or 30. Those 30 locomotives are being offered to engineers and firemen to take out and they are in such bad condition that the Government inspector comes along and says, "This is dangerously defective; put it out of service."

Mr. JEFFERIS. Do you mean after locomotives are ordered out of service that they do not take them out of service?

Mr. STEVENSON. I am not saying they do not take them out of service now.

Mr. JEFFERIS. That is what you said.

Mr. STEVENSON. Excuse me.

Mr. SUMNERS. I understand that statement of yours to mean a complaint against the condition of the locomotives.

Mr. STEVENSON. Yes, sir.

Mr. SUMNERS. This proceeding here is one where the complaint is supposed to be made against the Attorney General of the United States. And in order to get the picture before our minds, if I correctly understand the situation, while you are an ordinary witness as to facts, in a sense I imagine you impress yourself upon this committee as being both an expert on the facts and something of an expert with reference to the law. I make that statement, and I mean exactly what I say—with reference to the law which governs and determines the action of the Attorney General with reference to this situation. Now, coming right down to the situation: You represent one of the great organizations most vitally affected. I understood your statement to be a moment ago—I think I wrote it down correctly—that you regard the Attorney General of the United States as willing, ready, and anxious to do everything in his power to bring about the relief which you desire, namely, the relief with reference to the application of the safety appliance law applicable to the railroads of this country.

Now, if that is the situation, I don't see where we are headed for in this investigation on this charge.

Mr. STEVENSON. I am only a witness.

Mr. HERSEY. I understand that under your prayer you put out of commission locomotives that had not been inspected, although they were perfect.

Mr. STEPHENSON. Who knows they are perfect?

Mr. HERSEY. I mean they might be perfect and be put out of Commission.

Mr. STEPHENSON. Yes, sir; because the presumption is that they are defective.

Mr. HERSEY. If they have not been inspected?

Mr. STEPHENSON. Yes, sir; and the proof of the pudding is that there are a lot of these locomotives blowing up and killing our men.

Mr. HERSEY. We have got no proof of the pudding now.

Mr. CLAYTON. Just to clear up one or two things——

Mr. HOWLAND (interposing). Just a moment—I do not know that your name appears in the record. If it does, I have not heard it.

Mr. RALSTON. It was announced yesterday.

Mr. HOWLAND. Was it?

Mr. RALSTON. This is Mr. Clayton.

Mr. HOWLAND. Whom do you represent?

Mr. CLAYTON. I am associated with Mr. Ralston.

Mr. HOWLAND. Excuse me. That is all right.

Mr. HERSEY. Let us find out more about who Mr. Clayton is.

Mr. CLAYTON. I am associated with Mr. Ralston in this case.

Mr. HERSEY. Give your full name, please.

Mr. CLAYTON. C. T. Clayton, lawyer, member of the District bar.

Mr. FOSTER. He has been with Mr. Ralston throughout the hearings.

Mr. MICHENER. You represent the same client that Mr. Ralston does?

Mr. CLAYTON. Exactly. I only have one or two questions that I want to ask, simply to clear up any possible apprehension.

It seems to me, Mr. Stevenson, that the word "inspector" is being used here in a double sense. Can you explain precisely whether that

word is used to mean a Government inspection or is not used also to mean inspections carried on by the railroads of their own locomotives?

Mr. STEVENSON. Yes; in the act even, the boiler inspection act provides for inspections by the railroads themselves, supervised by the inspectors of the Government.

Mr. HOWLAND. I would like to have just that paragraph, if you will pardon me [handing a pamphlet to the witness].

Mr. CLAYTON. What paragraph?

Mr. STEVENSON. You wish me to read the paragraph?

Mr. HOWLAND. Just refer to it. I don't wish to interrupt the examination. I perhaps can find it.

Mr. STEVENSON. Yes; you can find it as quickly as I can.

Mr. HOWLAND. All right. Never mind.

Mr. STEVENSON. It is just the general body of the act.

Mr. CLAYTON. How many locomotives are there used in the United States?

Mr. STEVENSON. Oh, approximately 70,000.

Mr. CLAYTON. About 70,000 of them.

Mr. HOWLAND. Is this rebuttal?

Mr. JEFFERIS. That has all been gone over.

Mr. CLAYTON. Just a moment—I am asking a question or two, simply to recapitulate enough of these facts to make clear what the testimony does mean. I think it is worth while to do that.

Mr. HOWLAND. It may be, but I want to come down to rebuttal.

Mr. CLAYTON. We are coming down to it now. We will be through in just a moment. I think we will save time if you will let me finish this.

Mr. HOWLAND. I dare say we might.

Mr. CLAYTON. Out of these locomotives that are out on the road a number of times each month, did you say what the regulations require, how often should they be inspected by the roads?

Mr. FOSTER. He covered that. Not less than once a month, as I remember.

Mr. STEVENSON. I think it was Chairman McChord or somebody else that testified on that. I don't know the regulations sufficiently well to testify as to the requirements, but they require——

Mr. CLAYTON (interposing). I think you had it there.

Mr. MICHENER. The regulations themselves would be the best evidence. You can insert the regulations in the record very readily and have something authentic.

Mr. STEVENSON. I have not testified on that.

Mr. CLAYTON. I thought you had. We will pass that question then. You do not need to look for it. It will not be necessary to put that into the record, but I think Chairman McChord did testify that the inspection should be at least once a month, or after every trip. Now, with that number of locomotives on the road and with inspections made so frequently, how many inspectors are there? I think you did state that.

Mr. STEVENSON. There are 50 Government inspectors.

Mr. CLAYTON. And with that number of inspections facing them, of course they could not possibly make the inspections.

Mr. HOWLAND. That is argument, and I object to it.

Mr. JEFFERIS. That has all been gone over two or three times.

Mr. CLAYTON. I will get to your point in a minute. I only want one moment and then about two questions and then I think we will be through.

As I understand it, Mr. Stevenson, your proposition is that you asked for the bill because the number of locomotives to be inspected one beyond the capacity of this Government machine. Is that right?

Mr. STEVENSON. No.

Mr. CLAYTON. You want protection because of the larger need that can be met by the inspection board? Is that the reason?

Mr. STEVENSON. No; I don't think so.

Mr. CLAYTON. What is the reason?

Mr. STEVENSON. It is because the railroads don't inspect them.

Mr. JEFFERIS. That has all been gone over.

Mr. STEVENSON. The railroads themselves are failing to make inspections.

Mr. CLAYTON. So it is not Government inspection but railroad inspection that is the real trouble?

Mr. STEVENSON. Yes.

Mr. CLAYTON. That is what I wanted. That is all.

Mr. RALSTON. We will call Mr. Lovell. Mr. Lovell, will you state the position you occupy here?

**TESTIMONY OF ARTHUR J. LOVELL, VICE PRESIDENT AND NATIONAL LEGISLATIVE REPRESENTATIVE BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, WASHINGTON, D. C.**

(The witness was duly sworn by the chairman.)

Mr. LOVELL. I am vice president and national legislative representative of the Brotherhood of Locomotive Firemen and Enginemen.

Mr. RALSTON. How long have you held such position?

Mr. LOVELL. As national legislative representative only since July 1 of this year; as a vice president from 1920.

Mr. RALSTON. Is it part of your duty to collect together data and statistics relative to railway accidents and inspections?

Mr. LOVELL. Indirectly, yes. They come to us from our men, usually in the nature of complaint of defective locomotives, and it is part of my duty to take them up with the locomotive inspection bureau or the Interstate Commerce Commission.

Mr. RALSTON. One question has been raised here that perhaps you can answer, as to the relative number of boiler explosions, locomotive boiler explosions, to-day—or, let us say, during the course of the present six months—as contrasted with a like period in the prior year. Can you give the committee any information on that point?

Mr. LOVELL. Yes, sir. In July of this year there were 59 accidents and 65 injured; August of this year, 86 accidents, 4 killed, 94 injured.

Mr. BIRD. The question was on boiler explosions.

Mr. LOVELL. Yes, sir.

Mr. BIRD. Are those all boiler explosions?

Mr. LOVELL. I don't think they are analyzed down to just boiler explosions, but where men are killed, it is always, or almost always, by boiler explosions.

Mr. BIRD. Oh, well, you don't analyze them as to boiler explosions? They are statistics as to boiler explosions?



Mr. LOVELL. No; but this information is furnished by the locomotive inspection bureau.

Mr. BIRD. But you have just said that was accidents and not boiler explosions; it is boiler explosions that we are trying to get at.

Mr. LOVELL. It is defects of the locomotives.

Mr. BIRD. No; I asked for boiler explosions.

Mr. RALSTON. Let me change, if you please, the form of my question to meet the objection, and let your answer relate to serious accidents resultant upon railway defects—boiler defects or locomotive defects.

Mr. HOWLAND. I understood the witness to say that the document from which he was reading was from the bureau here in Washington.

Mr. LOVELL. Yes, sir.

Mr. HOWLAND. Well, then, call the bureau. I object.

Mr. RALSTON. Is that sent by the bureau to you?

Mr. LOVELL. Yes, sir; on my request.

Mr. HOWLAND. The bureau is the best evidence.

Mr. RALSTON. What better evidence than the letter from the bureau?

Mr. HOWLAND. That is a copy of a letter.

Mr. RALSTON. No; I beg pardon; this is the original.

Mr. LOVELL. This is a copy of a letter from Mr. A. G. Pack, with his signature.

Mr. HOWLAND. All right, Mr. Pack is alive, isn't he?

Mr. LOVELL. Yes, sir.

Mr. HOWLAND. Well, call him, then.

Mr. RALSTON. I submit that question to the committee.

Mr. GOODYKOONTZ. Have you a letter transmitting the memorandum?

Mr. LOVELL. Yes, sir.

Mr. GOODYKOONTZ. Pass it up to the chairman and let him look at it.

Mr. JEFFERIS. It seems to me, Mr. Chairman, if they have the original records down there they should not take a résumé or conclusion from the records.

Mr. MICHENER. There would not be any question about it as a matter of evidence, but as a matter of expedition here—I don't think Mr. Ralston would contend as a matter of law or evidence that this evidence which he has proffered, under the showing, is admissible; it would not be in any court of justice. Now I say that it might happen that it would be more expeditious to clean the matter up here and dispose of it in this way. That is the only ground on which it could be admitted.

Mr. FOSTER. Yesterday when the committee excluded testimony you willingly consented to let it go in. I wonder if you would not withdraw your objection now.

Mr. HOWLAND. I will withdraw any objection, but I sat here and saw so much go in that I am afraid some of you people will think I don't know enough to object. Now here is the point: It would have been just as easy to have subpoenaed the man who has charge or control of the official records as to have subpoenaed the legislative agent of this organization. That is what I object to. Now, I withdraw my objection.

Mr. JEFFERIS. And I will withdraw my motion.

Mr. RALSTON. Having made your speech.

Mr. HOWLAND. Well, the score is in your favor.

Mr. FOSTER. I was trying to get a concession that every lawyer knows he doesn't have to grant, just to help you along, Mr. Ralston.

Mr. RALSTON. Mr. Lovell, will you proceed?

Mr. LOVELL. In September there were 90 accidents.

Mr. JEFFERIS. I submit that the letter be read in.

Mr. RALSTONE Read the letter in its entirety.

Mr. LOVELL (reading):

WASHINGTON, D. C., December 8, 1922.

Mr. H. E. WILLS,

*Assistant General Chief Engineer and National Legislative*

*Representative, Brotherhood of Locomotive Engineers, Washington, D. C.*

Mr. HOWLAND. That is not a letter to you at all, is it?

Mr. LOVELL. Just wait a minute. It is a joint letter to Mr. Wills and myself.

Mr. H. E. WILLS,

*Assistant General Chief Engineer and National Legislative*

*Representative, Brotherhood of Locomotive Engineers, Washington, D. C.*

Mr. ARTHUR J. LOVELL,

*Vice President, National Legislative Representative, Brotherhood*

*of Locomotive Firemen and Enginemen, Washington, D. C.*

GENTLEMEN: This will acknowledge receipt of your letter of December 7, requesting me to supply you with the number of accidents reported to this bureau as being caused by the failure of some part or appurtenance of the locomotive or tender from July 1, 1922, to November 31, 1922, inclusive, with a similar statement for the five months preceding July 1 of this year.

In reply I beg to advise that accidents have been reported by carriers for the months indicated as follows, giving number of persons killed and injured.

	Acci- dents.	Killed.	Injured.
February.....	56	1	62
March.....	44	1	49
April.....	43	0	45
May.....	43	3	44
June.....	57	3	65
Total.....	243	8	265
July.....	59	0	65
August.....	86	4	94
September.....	90	5	98
October.....	83	3	95
November.....	115	12	131
Total.....	433	24	483

These figures do not include accidents taken from the records of the Bureau of Statistics, where all accidents are reported as required under the accident report act and not reported to this bureau as required by section 8 of the law.

Yours very truly,

A. G. PACK, *Chief Inspector.*

Mr. RALSTON. Have you figured the matter out in percentages, or did you leave it simply in totals as you have read?

Mr. LOVELL. Just in totals as it was read. It was simply for the information of our men who asked for this information.

Mr. RALSTON. Do statements come in to you relative to the objections the men have to taking out locomotives? It nevertheless feeling compelled to do so?

Mr. LOVELL. Yes, sir; there are very many of them.

Mr. RALSTON. Have you any considerable number with you?

Mr. FOSTER. May I ask whether you claim that this was communicated by this gentleman to the Attorney General?

Mr. RALSTON. In substance, I think Mr. Stevenson's testimony shows the communication of the absolute fact to the Attorney General.

Mr. FOSTER. That is what I assume is the case. Therefore the question of going into the communication with this gentleman, when you don't claim that such communications were transmitted to the Attorney General, is not necessary.

Mr. RALSTON. No; I don't say that he gave it to the Attorney General.

Mr. FOSTER. If you will say it is competent, again I say I have no objection.

Mr. RALSTON. Under the strict rules of evidence I would not say it was; of course if this is an investigating committee, as I think it is, the strict rules of evidence would not necessarily apply.

Mr. JEFFERIS. It is investigating, is it not, as to what has been brought to the Attorney General's attention before we could do anything to him?

Mr. RALSTON. The general subject has been brought to his attention, and this would show specifically the foundation upon which that is based.

Mr. HOWLAND. And according to the evidence you have introduced so far, the Attorney General has wired for affidavits or for statements of fact and so forth, and according to Mr. Stevenson, he has not presented anything to him other than the records down at the Inspection Bureau of the Interstate Commerce Commission.

Mr. RALSTON. Mr. Stevenson, I have told you why he has not done it.

Mr. HOWLAND. Well, I am not caring about the why. He didn't do it.

Mr. FOSTER. Now if that is so, do you think, Mr. Ralston, that this gentleman ought now to testify to communications he has had with the commission, which communications were not transmitted to the Attorney General?

Mr. RALSTON. He knows of them. If the committee doesn't want to hear it, well and good.

Mr. BIRD. Who was it presented by?

Mr. RALSTON. By the persons who are afraid to sign affidavits, afraid to take action for fear of indictment.

Mr. BIRD. No; by whom was this information conveyed to the Attorney General or his office?

Mr. RALSTON. I did not say this specific information was.

Mr. BIRD. Then how can it be pertinent?

Mr. RALSTON. I submitted the question to the committee; if the committee doesn't want it, all right.

Mr. BIRD. I am asking you this question: How can this gentleman's testimony be pertinent as to calling it to the attention of the Attorney General or his department?

Mr. RALSTON. The Attorney General was told of the existence of certain things.

Mr. BIRD. By this man?

Mr. RALSTON. No; not by this man.



Mr. HOWLAND. You promised though, didn't you. Mr. Hayes said that you would furnish to the Attorney General affidavits and statements that would fill a freight car, of the names of witnesses that would substantiate this bill in equity that you were going to file, didn't you?

Mr. LOVELL. No; I don't think I made such a statement.

Mr. HOWLAND. Not such a statement—now don't be technical. Didn't you agree to furnish to the department affidavits and papers and names of witnesses that would substantiate the relief that you were going to pray for, or asking the Attorney General to pray for it?

Mr. LOVELL. I told Mr. Hayes, and again reiterate that I would furnish him anything that the department could not furnish in the way of names of all men, and I have here, I think, in this file perhaps a thousand or two thousand names from different railroads.

Mr. HOWLAND. Yes; but up to the present time have you furnished the department with a single statement or a single affidavit or a single name?

Mr. LOVELL. I have not been requested to.

Mr. HOWLAND. Oh, you have not been requested?

Mr. LOVELL. No, sir.

Mr. HOWLAND. You were praying the Department of Justice of the United States to bring action, weren't you?

Mr. LOVELL. Yes, sir.

Mr. HOWLAND. And you tendered these things, didn't you?

Mr. LOVELL. Yes, sir.

Mr. HOWLAND. And you never have produced them, have you?

Mr. LOVELL. I met Mr. Hayes on one occasion since that.

Mr. HOWLAND. Answer my question. You never up to the present moment have produced them, have you?

Mr. LOVELL. I have not been asked for them, if you please, sir. I have offered them and again reiterate that offer.

Mr. RALSTON. You reiterate it now, do you?

Mr. LOVELL. Yes, sir.

Mr. HOWLAND. This is a nice time to be reiterating it now, when you are trying to impeach somebody.

Mr. LOVELL. Pardon me, sir, I am not trying to impeach anyone.

Mr. HOWLAND. Did Mr. Horn ever communicate to you the telegram that was sent to him on November 25, when Mr. Horn was asked:

Has Mr. Lovell procured any affidavits in accordance with the understanding at your conference here?

Mr. Horn never asked you to produce any affidavits and furnish them to the Department of Justice?

Mr. LOVELL. No, sir.

Mr. HOWLAND. He never did?

Mr. LOVELL. If he did, I don't remember it.

Mr. JEFFERIS. What is the date of that telegram?

Mr. HOWLAND. November 25. That is all.

Mr. RALSTON. I think that is all. I have just received a request from Mr. Keller, asking me to ask for a suspension for about 15 minutes for the purpose of consultation as to the next step, if the committee will take a recess for that time.

Mr. HOWLAND. Do you rest on this specification?

Mr. RALSTON. Yes.



The CHAIRMAN. Mr. Howland do you desire to offer any testimony?

Mr. HOWLAND. Indeed we will.

The CHAIRMAN. You desire to have a recess before we conclude with this specification?

Mr. RALSTON. I would appreciate it if I might have it at this time.

The CHAIRMAN. Very well; we will take a recess for 15 minutes.

(At the expiration of the recess, 2.55 o'clock p. m., the committee resumed.)

**STATEMENT OF HON. O. E. KELLER, A MEMBER OF CONGRESS  
FROM THE STATE OF MINNESOTA.**

[See page 358.]

Mr. KELLER. Mr. Chairman and members of the committee, I have prepared a statement which I would like to read to the committee at this time.

The CHAIRMAN. We are here to listen to testimony now.

Mr. HOWLAND. Mr. Chairman, we are proceeding to take testimony on the specifications, are we not? That is the business of this committee.

Mr. FOSTER. Will you not kindly defer the reading of your statement until we get through with No. 4?

Mr. KELLER. Do they want to put this in?

Mr. HERSEY. I would like to ask if Mr. Keller's statement is in regard to this specification?

Mr. KELLER. It is in regard to Resolution 425 before the committee.

Mr. HERSEY. With regard to the whole resolution?

Mr. KELLER. Resolution 425.

Mr. FOSTER. Will you let us finish this testimony first?

The CHAIRMAN. Have you any witnesses, Mr. Howland?

Mr. HOWLAND. We would like to put on one witness, if the committee would indulge us.

**TESTIMONY OF MISS MABEL WALKER WILLEBRANDT,  
ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF JUSTICE,  
WASHINGTON, D. C.**

(The witness was duly sworn by the chairman.)

Mr. HOWLAND. Please state your full name and your business and present position.

Miss WILLEBRANDT. Mabel Walker Willebrandt, Assistant Attorney General.

Mr. HOWLAND. How long have you occupied that position in the Department of Justice?

Miss WILLEBRANDT. A little more than a year—since August, 1921.

Mr. HOWLAND. In connection with your duties in that office, have you had to do with the matter of a certain complaint that was brought to the attention of the President and to the attention of the Attorney General by Messrs. Horn and Stevenson?

Miss WILLEBRANDT. I have.

Mr. HOWLAND. When did that matter come to your attention?

Miss WILLEBRANDT. It was brought to the attention of my division about September 1—November 3, I believe, to be exact.

Mr. HOWLAND. In what shape did it come to your desk?

Miss WILLEBRANDT. It was referred to my division by the Attorney General.

Mr. HOWLAND. Since that time, tell us what your activities have been in connection with this complaint and what you have done, in your language and in your own way.

Miss WILLEBRANDT. The matter was referred to my division, because at that time it had developed from the complaints that had been lodged with the Attorney General's office by Messrs. Horn and Stevenson that the public law under which we would have to proceed, if we could proceed, was under the boiler inspection act, which is one of the minor regulations of commerce handled in my division. For that reason the Attorney General requested a memorandum as to how many safety-appliance cases were on file with various United States attorneys over the country. We found that there were 152 such cases; that there were no cases that had been filed by the Interstate Commerce Commission under the boiler inspection act.

The question then was given us for determination as to whether it was possible to proceed under the boiler inspection act, and to secure a compliance with it, to act from the Attorney General's office directly, either by means of injunction or any other way.

We proceeded in my division to prepare a memorandum as to whether injunction would be a proper remedy and could be pursued to secure a compliance with the boiler inspection act.

Later, about November 15, Messrs. Horn and Stevenson again came to the department and requested another interview. I was out of the city on that day and the conference was had, as has been already testified here, with Mr. Seymour and a representative from my division and other representatives of the Department of Justice who had been handling the matter when it was a general question before the Attorney General as to whether we could institute injunction proceedings, much in line with the injunction that had been used in Chicago—along that line.

As a result of that conference, and because of the representations made by Mr. Stevenson at that time, Mr. Stevenson and Mr. Horn, and the other members who were present there, of the gravity of the situation, and because of the letters and briefs which they had submitted to the President, to which they again referred, and because of their statements that the condition was a grave one demanding immediate attention, we undertook to run down the truth or falsity of those statements and decide whether it was possible to take any action by way of injunction.

The following day a representative from my division went over to the Interstate Commerce Commission, the division of locomotive inspection, and we submitted to them a list of the evidence which we would need to decide whether we could bring any injunction or not.

You see, what they had stated to our department was that people's lives were in danger and interstate commerce was being paralyzed, and that there was a noncompliance with the orders of the Interstate Commerce Commission, and that the usual procedure under the boiler inspection act could not remedy any of those situations.

Mr. JEFFERIS. Could or could not?

Miss WILLEBRANDT. Could not. The list of questions which we submitted to the bureau of locomotive inspection, after a day or two, it developed could not be answered by that bureau, because they had not any attorney there; and two days thereafter I directed Mr. Hayes to go over with a force of clerks to run down the specific statements made by the representatives of the brotherhoods to find out whether they were in a position to be used as evidence, if we should decide that we could proceed against any of these railroads to compel compliance with the statute.

The telegrams continued to come into our department from the representatives of the brotherhoods asking for immediate action. They called attention particularly to engine No. 275 and the conditions of the Texas & Pacific. Now, the Texas & Pacific Railroad is one that is in the hands of a receiver. So it made the question as to whether it was possible for the Attorney General to render any relief in that case a little different—and it gave us an angle on which to work. But we could not work unless we knew what evidence we would have to submit if we went into any court to ask for mandatory relief.

The results of the investigation which we conducted over in the bureau of inspection developed these facts: One, that inspection—take, for instance, the Texas & Pacific as an example—the inspection conducted by that road has not broken down; in fact, the engines of the road are being inspected—79 per cent of all the engines have been inspected—during the periods of the first months of the fiscal year 1923, as over against 60 per cent of the engines for the same period of time in the fiscal year 1922.

So any relief that we should ask based upon an allegation of a failure to inspect would fail as to that road.

In case we tried to run down whether we had evidence of jeopardy to the lives of the traveling public and trainmen, and, again, taking the Texas & Pacific, which had been so often referred to here as an example, we found that there had been five accidents. The allegation from the attorneys of the brotherhood had been that these accidents were directly traceable to the defective inspection or to taking out of an engine that had been ordered out. We felt that if either of those two conditions were true, it might give us something to work on. We wanted to find out whether we had that evidence to work on, and running down the reports of these accidents in the Bureau of Locomotive Inspection, which we did ourselves, we found that there were five accidents reported by the Bureau of Locomotive Inspection—I am not giving my own opinion—stated that only one might be traceable to a locomotive inspection.

Second, I would like to mention the engine 275, which has been alluded to, of which so much has been made, that has been referred to as a “blow-up” of engine 275. It was an accident in that case, but when we ran down the results of the inspector’s reports in the bureau of locomotive inspection, we found we did not have any evidence there that we could very well base it on, because the report says:

General condition of locomotive good; and cause of accident failure of an overheated crown sheet due to low water.

Now, low water can not be directly traceable to a failure of inspection; it can not be exclusively traceable to that; it is the duty of the engineer and the fireman to look to see that there is water in the

boiler, and there is nothing that we had in the way of regular evidence to base up that claim.

To go back to the following day or two, which probably was about November 21, we received telegrams asking us what we were going to do in the matter. Our reply telegram has been a number of times read into the record, and I will not read it. But you will remember that it clearly stated that whatever action we could take depended upon the proof we were able to secure and the evidence which was at our hands; and we urged the representatives of the brotherhoods to send us anything in the nature of evidence on which any summary proceeding could be based that would show that there was danger to the public or that would show that the condition exhibited an imminent danger that did not come, but in reply we had the telegram, which has already been alluded to in the record here, telling that "our men would lose their positions if they made affidavits of the facts which they had said existed."

A further interview, shortly after that telegram, was requested by Mr. Stevenson, and at that time we offered the brotherhoods secrecy, and all the protection that the Government was able to extend them, if they would furnish these affidavits. The statement was made by the Department of Justice:

Surely your men must trust your brotherhoods enough so that they will give these affidavits; and you, as an attorney, will then know whether you have in your hands evidence upon which we could possibly proceed, and surely you can then give us the names of the people that we can rely on.

Again, two days following, we telegraphed to Mr. Horn, asking him to rush us the names of the people whom we could rely upon to show the facts which they alleged that their men were being disciplined or were being put in danger against their best judgment in taking out engines that they realized were defective. We never received any reply to that wire, and we never have received that information.

I would like to have the committee's attention brought to this fact, too: That up until November 1 this was a general question before the Department of Justice. It has been brought to the attention of the committee that on October 11 the President sent these attorneys to the Attorney General. As a result of that interview and as a result of their request to give them relief, by injunctive means, and because they did not state to the Attorney General any particular act or law upon which they could proceed, he telegraphed out to Mr. Esterline, asking Mr. Esterline, who was handling other injunctions for him in Chicago, to go to see these people, and see if there was any way by which they could be given injunctive relief, which telegram at that time I would like to read. This is dated October 11. [Reading:]

Blackburn Esterline, Blackstone Hotel, Chicago: It is very important that you see Oscar J. Horn, attorney, 1024 Engineers Building, Cleveland. Can you meet him in Cleveland Friday? If not, can you meet in Chicago Friday? If you are not able to do either, wire him when you can meet him in Cleveland; also when you can meet him here, earliest possible time. I am much interested in this matter. Please wire him at Cleveland; also me here.

Mr. HERSEY. Who signed that?

Miss WILLEBRANDT. It is signed "H. M. Daugherty, Attorney General."

On the same day the Department of Justice reported to the President the interview which had been had and suggested that the matter also be referred to the Interstate Commerce Commission. I am informed that it was referred by the President to the Interstate Commerce Commission, and our department then received, two days following, a letter from Chairman McChord of the Interstate Commerce Commission, which gave the Attorney General reason to believe it was receiving expeditious handling there. The letter from Chairman McChord is dated October 13, 1922. [Reading:]

MY DEAR MR. ATTORNEY GENERAL: I have the honor to inclose herewith, for your information, copy of a memorandum transmitted by us to our chief inspector, bureau of locomotive inspection, and to the chief of our bureau of inquiry, which explains itself.

Faithfully yours,

C. C. McCHORD, *Chairman.*

Mr. HOWLAND. What was the inclosure?

Miss WILLEBRANDT. The inclosure was the memorandum to the chief of the bureau of locomotive inspection, Mr. Pack, and to the chief of the bureau of inquiry, Mr. Hickey. This is two pages in length. Do you want me to state the substance of it or read it?

Mr. HOWLAND. I think the committee would be glad to have the substance; otherwise read it.

Miss WILLEBRANDT. In substance it states, in the first paragraph, that he received a copy of its commission conference of October 9, wherein it was voted that the bureau of inquiry should render all possible assistance to the chief of the bureau of locomotive inspection, with respect to calling the attention of the proper district attorneys to all violations of the law under their jurisdiction, and that the commission advised the Attorney General of the United States that the commission stands ready to aid him and his United States attorneys if he desires, in the selection of flagrant cases, in the matter of prosecution, and that copies of these cases that are sent out to United States attorneys will be sent over to the Department of Justice, which I might state was a courtesy and not anything mandatory on the part of the Interstate Commerce Commission to us.

Then it goes on to state that the object of the memorandum is to call your attention to the action of the commission, and also to the law which requires the bureau of locomotive inspection to forward these cases promptly to United States attorneys, and for them to do so.

It ends by saying that it is the thought of the commission that the bureau of inquiry, through its legal staff, could be of assistance to the chief inspector in drawing up the necessary form or forms to be used by the chief inspector in advising the several United States district attorneys of the violations of the act.

The next conference on the matter was the conference which has been referred to, on November 1, when, again, the attorneys for the brotherhoods came to the Department of Justice and requested a conference at that time.

With reference to the Texas & Pacific, and whether—using it again as an example—action could be taken in that case, we made every effort possible to run down all of the allegations that had been brought to our attention. The allegations, you will agree, did present an alarming state of affairs if any of them were true in



entirety or if they admitted of legal proof; and it was our effort to find out whether they did. As to whether the Texas & Pacific had made inspection I have already stated to you that the percentages indicated they had made inspections.

We then examined their engines that were actually on the road, and we found that the inspection reports indicated that in July, 1922, they had failed to inspect 132 engines. In August they had failed to inspect 52 engines, but since that time there had not been a failure of an inspection report being received on any of the engines on that road.

The next allegation that was made to us was that the workmanship on the Texas & Pacific—again using it as an example—that they were not keeping up with the number of employees and the class of workmanship that they ought to do, in order to keep their engines running in interstate commerce.

The reports of the Interstate Commerce Commission bear out that fact, that there are less repairs being made now than were made before June, and particularly are there less repairs being made of a major nature, that is, repairs that take the engine out of service for as much as 30 days. But whether we could charge the road in any manner to use that as evidence in a mandatory injunction rested as to whether we could show that the road was not using due diligence to repair; and upon our examination into the Interstate Commerce Commission's reports on that, to which we were referred by the brotherhood attorneys, we found that they are employing 222 more shopmen than they employed over a similar time in June.

Next, the report was made to us by telegram from the brotherhood attorneys, that preparations like bran were being used in boilers to cover up leaks.

Mr. MICHENER. That is bran off of wheat?

Miss WILLEBRANDT. Yes. The telegram which brought that to our attention is dated November 24 [reading]:

HON. HARRY M. DAUGHERTY,

*Attorney General, Department of Justice, Washington, D. C.*

Locomotive conditions on Texas & Pacific desperate. Company using preparation to hide leaks and boiler defects, resulting in hidden danger which develops in operation. Men being abused and disciplined and charged with contempt of court, under old injunctive order when they protest against conditions. Government inspectors doing everything possible, but their orders are ignored by officials. Must there be catastrophe of large proportions before action is taken by the department to enforce United States safety statutes?

Mr. JEFFERIS. Who signed that?

Miss WILLEBRANDT. Pardon me. That was signed "Oscar Horn, attorney for Brotherhood of Locomotive Engineers; Thomas Stevenson, attorney for Brotherhood of Locomotive Firemen and Enginemen."

That again presented, if true, facts upon which we might consider acting. We tried to find out whether they were in any shape to be evidentiary, upon which we could act. To do that, we took two steps. We went over to the bureau of locomotive inspection and we required that they send inspectors immediately to the Texas & Pacific, and please keep in mind that these inspectors are not unsympathetic with the attitude of the brotherhoods in this matter. Most of them are old trainmen; in fact, I may say all of them; and the great percentage of them are members of the brotherhood. We asked that

they dispatch inspectors to find out whether bran was being used. and in response to our request the Interstate Commerce Commission directed their inspectors to make an investigation of that fact. In response to their inquiry, we were furnished this information from the bureau of locomotive inspection from their inspector, Andrew F. O'Connor.

Mr. JEFFERIS. Where is that wire from?

Miss WILLEBRANDT. That wire reads:

DALLAS, TEX., November 29—4.30 p. m.

PACK, INTERSTATE COMMERCE COMMISSION,  
Washington, D. C.

Your wire yesterday. Did not find any evidence of bran or other foreign matter in boilers of Texas & Pacific during investigation. Engine failure report mailed.

And that is signed "Andrew O'Connor."

Second, we are trying to find out whether there is any evidentiary fact as to the next allegation about their men being disciplined or discharged because they failed to take out locomotives which they regard as improper, and on the same date that we requested this information through the bureau of locomotive inspection of the Interstate Commerce Commission we wired:

NOVEMBER 25, 1922.

OSCAR JOHN HORN,

*Attorney for Brotherhood of Locomotive Engineers, Cleveland, Ohio:*

Rush names of witnesses and affidavits if possible as to acts mentioned in your wire November 24. We have force at work compiling proof to be used at earliest possible moment. Has Mr. Lovell procured any affidavits in accordance with understanding at your conference here?

H. M. DAUGHERTY.

We have received no reply to that other than this, if this can be thought to be a reply. This comes from Mr. Stevenson. That is why I am not entirely sure whether it is a reply to this wire which was sent out to Mr. Horn, but it reads:

CLEVELAND, OHIO, December 1, 1922.

Hon. H. M. DAUGHERTY,

*Attorney General, Washington, D. C.:*

Referring to your suggestion of probable answer to any action relative to condition of locomotives. Interstate Commerce Commission bureau of statistics issues monthly bulletin showing total number of employees by classes on class 1 steam railroads.

OSCAR HORN,

*Attorney for Brotherhood of Locomotive Engineers.*

THOMAS STEVENSON,

*Attorney for Brotherhood of Locomotive Firemen and Enginemen.*

What we wanted were the names of all the engineers whom we could rely upon to testify to the fact that they have been compelled to take out locomotives that they knew were dangerous, and we have never been able to get them.

There still remains the request to furnish to the Department of Justice the three things which we have requested, both personally in conference and by wires, to which I will call your attention.

First, affidavits that will substantiate the condition that they have alleged exists of the members of the brotherhoods being compelled to take out locomotives. In the absence of that, names of any witnesses on whom we can rely who will testify to such effect, and that has never been furnished.

In addition to that there is now in process of compilation by the Interstate Commerce Commission, which compilation we have requested, the report of the embargoes that some roads are alleged to have made against certain commodities, and whether those embargoes result from the fact that the engines are defective or are held an unreasonable time without having repairs made upon them.

Do you want me to bring this right down to date?

Mr. HOWLAND. Yes. Go right ahead.

Miss WILLEBRANDT. On November 27—no; November 25—the Department of Justice sent out a letter to all United States attorneys, which letter has already been read into the record, where it requested the United States attorneys to, when cases are reported to you from the Interstate Commerce Commission for violation of boiler inspection or other safety appurtenances acts, “give them the earliest possible hearing, enforce it vigorously, and accept no compromise therein.”

Mr. HOWLAND. How is that signed?

Miss WILLEBRANDT. That is signed by H. M. Daugherty, Attorney General, but was a circular to all of the United States attorneys in the country. We sent that because of the assurances from the Interstate Commerce Commission that they had detailed attorneys from their bureau of inquiry to help their bureau of locomotive inspection to speed up the filing of actions for violations of this act, which method of relief, for violation of the act, is contemplated in the act itself.

And it also is in line with the policy of the department that was again shown back in August—August 1, I believe it was—when the Attorney General sent out a telegram to the marshal at Kansas City, Mo., to correct an alleged condition of interference with inspectors who were going in at the time of the strike to make inspections of defective locomotives.

That telegram reads:

AUGUST 1, 1922.

UNITED STATES MARSHAL,  
*Kansas City, Mo.:*

Mr. Pack, Interstate Commerce Commission, advises that deputy marshal at Sidell, Ill., refused allow A. D. Royer, Interstate Commerce Commission inspector, to enter engine house at Sidell, Ill. Proper credentials were presented. Look into this matter personally and if Mr. Longer's credentials satisfactory see that he meets no interference in discharge of his duties.

Mr. HOWLAND. Who is that signed by?

Miss WILLEBRANDT. That is signed by Daugherty.

In addition to that I would like to call the committee's attention to this fact, that the department was in possession of reports from at least one section of the country that various persons—well, I will narrow it down to just exactly what I know—that there was one person at least, who had been arrested for it, was guilty of tampering with boilers, putting in quicksilver, I believe was the material used in that instance, to make boilers defective.

In mentioning this I am not in any manner alleging or placing that at the door of the brotherhoods, but it was a fact that was in our possession, that we were obliged to take into consideration, and that made us feel that it was necessary to have ample evidence, or at least sufficient legal evidence, that these accidents to which allusion was made, were called from a lack of inspection, or from actual breakdown of the boilers, themselves, as a result of failure on the

part of railroad inspectors to do their full duty, which failure we could at least trace to that particular engine and that accident.

Mr. HOWLAND. From the time that this matter was placed on your desk, down to the very present moment, what evidentiary fact, what affidavit, what statement, what name of prospective witness has been placed in your hands by the proponents in support of the claims filed with you?

Miss WILLEBRANDT. Nothing, whatever.

Mr. HOWLAND. In the absence of that, has not the department, and your particular branch of it, in order to get evidentiary facts and important testimony, placed a representative in the Interstate Commerce Commission to go down there, examine the reports there and try in every way to get competent and legal evidence yourself, to support these allegations, if any such evidence existed?

Miss WILLEBRANDT. We have submitted lists of questions, which I felt would give us facts on which we could decide whether we had been given evidence to base an action to the Interstate Commerce Commission, and finding that they had no attorney to separate those facts from the mass of detail over there, we sent an attorney, and sent with him two clerks, and they worked there for more than two weeks. That was because of the state of facts, which were alleged to exist, to us, in these complaints, and by these letters, appeared to be grave, and we felt that if we could not get the evidence any other way we wanted to run it down by our own attorneys, through every branch of the Government that it was possible, to see whether those facts could be substantiated, as evidence—alleged facts.

Mr. HOWLAND. From that time, down to the present moment, the Attorney General has been willing, ready, and anxious to take any steps in his power, through his department, to remedy any of these evils that he could, provided he could obtain himself the necessary evidence, or have it furnished to him by these complaining brethren; is that the situation?

Miss WILLEBRANDT. Absolutely. In fact——

Mr. HOWLAND. No; has the Attorney General, or your department, in connection with it, having charge of this particular matter—have you refused or neglected to institute any proceedings where violation of the law supported by competent testimony, has been presented to your department or to the Attorney General?

Miss WILLEBRANDT. In my opinion we have not; but——

Mr. HOWLAND. What is the procedure—although I do not know that I ought to ask you this question—up until such time as you are able to procure competent legal testimony to substantiate your position, either yourselves or furnished to you by others, it would be impossible to file any legal proceedings in court by your department that could be substantiated——

Mr. RALSTON (interposing). Is that argument or a question?

Mr. HOWLAND. A little of both.

Mr. RALSTON. I thought so.

Mr. HOWLAND. In other words, you do not take the position that you should go into court——

Miss WILLEBRANDT. I am not commending to the Attorney General, or I am not going to recommend to the Attorney General, to filing an injunction unless I know I have evidence in equitable relief. I

have asked for that evidence. I have searched for it, too, but to date I have not been able to obtain evidence that will sustain such a procedure, and I have not been furnished it. It has not been furnished to us. In the absence of that evidence, I believe that we have done everything we can do by urging United States attorneys to give precedence on their calendars to cases that are designed to enforce the statutory relief provided for violations of these statutes, and to prosecute them diligently and accept no compromise.

Mr. HOWLAND. So far as I am concerned, I am through with the witness, if the committee wants to ask her any questions.

Mr. GOODYKOONTZ. I would like to ask you——

Mr. HOWLAND (interposing). Just a minute, Mr. Goodykoontz.

Miss WILLEBRANDT. I should like to bring this right down to date. Shall I proceed?

Mr. HOWLAND. Yes; I thought you had; bring it right down to date.

Miss WILLEBRANDT. I think I talked of the investigation we conducted as to their last telegram about the use of bran; and——

Mr. HOWLAND. Yes; that is right.

Miss WILLEBRANDT (continuing). And their men being reprimanded or disciplined for failure to take out engines.

On December 2, our attorney and clerks who had been at work in the bureau of the Interstate Commerce Commission, locomotive inspection branch, had compiled all the statistics that were then available and on the possible evidence that was then available as to the three roads which the bureau of locomotive inspection reported to be the worst, and which the brotherhood attorneys had mentioned to us.

As a result of that we wrote a letter to the Interstate Commerce Commission calling their attention to the conditions that we had found existing and requested recommendation from that bureau as to what action could be taken to alleviate conditions which we found to exist.

Do you want that letter read?

Mr. HOWLAND. I do not care for it.

Miss WILLEBRANDT. That sets out what we had further, and asks for recommendations.

As a result of that, on December 8, the chairman of the Interstate Commerce Commission wrote to us setting out to us, calling our attention to the fact that under section 9 of the boiler inspection act it is the duty of the bureau of locomotive inspection, Interstate Commerce Commission, to forward this verified information to us, for us to send out to the respective United States district attorneys for appropriate action by them.

He said that it had been the opinion of their bureau that their investigation should be along the lines of the act; that the act provides for its penalties. He further said that he had given additional help to the bureau and had directed them to push the matter "with all possible dispatch." Those are his words, and then, in response to our inquiry——

Mr. JEFFERIS (interposing). That is from the Interstate Commerce Commission?

Miss WILLEBRANDT. Yes; and then in response to our request as to whether their bureau would, in view of the facts which were found



from investigations conducted by us of the violations then existing in their bureau, recommend a mandatory injunction of any kind, he adds this:

If the mandatory injunction were employed to require carriers to observe the act in the reporting of accidents, in the making and reporting of the inspection of locomotives, and in the disuse of locomotives ordered out of service by the inspectors, it might serve a useful purpose.

Having that matter then before us, we considered the question as to whether or not we could proceed with what evidence we had on that question, and in reply wrote to Mr. McChord under date of December 12, 1922, as follows:

DECEMBER 12, 1922.

HON. CHARLES C. McCHORD,  
Chairman Interstate Commerce Commission,  
Washington, D. C.:

SIR: This department acknowledges receipt of your letter of December 8, 1922, delivered by messenger in response to our letter of December 2, and it desires to express appreciation for your prompt consideration of the same.

We note that you have urged the chief inspector of the bureau of locomotive inspection, upon whom devolves the duty to give information to United States attorneys of all violations of the boiler inspection act coming to his attention, to "push these matters with all possible dispatch."

We are already receiving copies of complaints forwarded by him to United States attorneys at Denver, Colo., and Fort Worth, Tex., charging the Fort Worth & Rio Grande Railway and the Denver & Rio Grande Western Railway Cos. with violations of the boiler inspection act.

In cooperation with your announced intention of pushing these cases, and in order that the policy of vigorous and prompt enforcement of the boiler inspection and safety appliance acts may prevail throughout all departments of the Government charged in any respect with the enforcement of the same, we have directed United States attorneys to give these cases the earliest possible hearing, prosecute them vigorously, and accept no compromise therein. A copy of our letter to United States attorneys on this subject is herewith inclosed.

You state that a mandatory injunction might serve a useful purpose if it were employed to require carriers to:

- (a) Observe the act in reporting accidents.
- (b) Report the making and inspecting of locomotives.
- (c) Compel disuse of locomotives ordered out of service by the inspectors.

We are anxious to use every means of the law to improve conditions of safety to railroad employees and the traveling public and at the same time protect transshipment of commodities of commerce. To that end we have carefully marshalled the facts gathered from your bureau of locomotive inspection, with the view of determining whether an injunction would lie and would improve conditions.

This zeal on the part of the department to exhaust every possible means before it is probably what you referred to when in our telephone conversation the other day you stated that the Department of Justice had certainly been "ultra active" in the matter.

We are, however, in considerable doubt as to whether injunction along the lines suggested in your recent letter could be maintained, for the following reasons:

- (a) As to a mandatory feature, requiring carriers to report accidents.

Section 8 of the boiler inspection act provides:

"That in case of accident resulting from failure from any cause of a locomotive or its appurtenances, resulting in serious injury or death to one or more persons, a statement forthwith must be made in writing of the fact of such accident \* \* \*."

You will note that under such a statute a question might arise as to what would be considered a serious injury. Further, from our review of the data collected from the bureau of locomotive inspection we find that roads considered to be in the gravest condition have reported promptly all accidents resulting in death or permanent injury.

- (b) As to a mandatory requirement to report the making and inspecting of locomotives.

From reports in your bureau, the bulk of these derelictions occurred from July to September. Compliance with this requirement has so far improved on all roads under investigation for the months of October and November. That I doubt if any serious case could be maintained against them along

(c) A mandatory order to compel roads to disuse locomotives that are ordered out of service by the inspectors.

We are unable to find one instance wherein the Denver & Rio Grande Western Railroad refused to obey the order of the inspector to take an engine out of service during the months of October and November. During the month of September engines were run by this road in open defiance of the inspector's order, but inasmuch as the condition is not now a continuing one we believe injunction would not lie.

The other roads under consideration have never at any time refused to obey the orders of the inspectors to remove engines actually ordered out of service.

The gravamen of the whole situation is that some roads are failing to make repairs as speedily as they did before July 1. This failure is liable to result in a breakdown of the motive power of those roads so that the public will suffer not only from the use of dangerous equipment but from an impairment of shipping facilities.

The problem that this department has earnestly set about to solve is whether this really grave feature of the situation can be improved by a resort to injunction, as the legal remedy.

We will appreciate your continued advices in this matter and we will continue to cooperate with your commission in every possible way to enforce vigorously the remedies now provided in the boiler inspection and other safety appliance laws.

Very truly yours,

*For the Attorney General.*

Mr. RALSTON. I would like to ask Miss Willebrandt some questions. You have shown commendable industry, yourself and associates, in the writing of letters. Has any single, concrete thing been done to change the conditions of things on the railroads in all this time?

Miss WILLEBRANDT. Do you mean have we gone out and taken any engines off the road, for repairs, ourselves?

Mr. RALSTON. Of course not. I mean, as you very well understand, has the Attorney General made the slightest move in court anywhere to change the present condition of things. You have written scores of letters.

Miss WILLEBRANDT. There has been no action filed in court by us, other than the filing of those actions referred to us by the Interstate Commerce Commission.

Mr. RALSTON. Then there has been practically no result. Were you aware of the fact that during the time when those were being industriously written, there was a percentage of death and injuries on the railroads vastly in excess of prior times, the cause of which you seem to have been unable to discover?

Miss WILLEBRANDT. I am not, sir, aware that the percentage of accidents on the roads has increased; in fact, it has decreased.

Mr. RALSTON. You heard the testimony of Mr. Lovell, referring particularly to accidents to boilers, did you not?

Miss WILLEBRANDT. I heard the letter which he read.

Mr. HOWLAND. It did not refer to boilers; I did not understand that it referred exclusively to boilers.

Mr. RALSTON. To locomotives?

Mr. HOWLAND. Yes; to locomotives.

Mr. RALSTON. So that the Attorney General's office, in all this time, has taken no steps to decrease that high percentage of accidents which are continually occurring?

Miss WILLEBRANDT. I am not aware that those accidents which he reported in that letter referred to accidents which are traceable to the failure to inspect. I would like to know whether that is true.

Mr. RALSTON. You knew, did you not, that the inspection laws in the past few months have been largely disobeyed?

Miss WILLEBRANDT. No, sir, I do not know that the inspection laws—if you mean by that the conduct of inspecting and the reporting of those inspections have increased——

Mr. RALSTON (interposing). I mean——

Miss WILLEBRANDT (interposing). It did increase during July and August.

Mr. RALSTON. I mean, inspections by railroads.

Miss WILLEBRANDT. That has not increased; it increased during July and August.

Mr. RALSTON. Yes.

Miss WILLEBRANDT. But it has decreased in October and November.

Mr. RALSTON. In other words, the railroads more nearly observed the law in November than they did in July and August?

Miss WILLEBRANDT. They more nearly observed the law in the reporting of inspections and the making of inspections; yes, sir.

Mr. RALSTON. What is your idea with regard to the bringing of an injunction? Would you make it mandatory or prohibitory in form—supposing you were to bring them in this connection?

Miss WILLEBRANDT. That is hardly to answer that question, for this reason: I believe every injunction, it being a special proceeding and an extraordinary proceeding, has to be based absolutely on the evidence that you can submit for it.

Mr. RALSTON. That is true in individual cases; but where there is a continual disregard of the law by the railroads, in not having inspection, and in putting in service locomotives which have not been inspected, have you any idea what particular kind of injunction you would bring?

Miss WILLEBRANDT. You have based it upon a presumption which I have just stated to you my investigation does not bear out, and that is the presumption that the railroads are failing to make inspections. My investigation indicates that railroads are making inspections, so far as the report for the Interstate Commerce Commission goes.

Mr. RALSTON. Is that the only answer you want to give to my question?

Mr. JEFFERIS. I submit that that is a moot question, according to all the evidence here. This is not a moot court.

Mr. RALSTON. We might be permitted to differ on it being a moot question.

Mr. FOSTER. He may want the opinion of a good lawyer as to what he should do.

Mr. RALSTON. Well, I have tried to get it, and not having gotten it, I will pass on to some other propositions.

Miss WILLEBRANDT. Will the stenographer read the question?

(The stenographer read the last preceding question, as follows:)

Mr. RALSTON. That is true in individual cases; but where there is a continual disregard of the law by the railroads, in not having inspection, and in putting in service locomotives which have not been inspected, have you any idea what particular kind of injunction you would bring?

The CHAIRMAN. That is entirely irrelevant.

Miss WILLEBRANDT. I have.

Mr. FOSTER. She has answered only part of it.

Mr. RALSTON. We will let her answer go at that.

Miss WILLEBRANDT. If he wants to make it a hypothetical question to me, that if such condition existed or exists, then I would say that, if I found that an injunction would lie at all, I would make it mandatory.

Mr. RALSTON. Is there any way in which you would make it prohibitory?

Miss WILLEBRANDT. No.

Mr. GOODYKOONTZ. That depends on circumstances——

Mr. RALSTON (interposing). You would not prohibit them from taking out engines, for instance, which had not been inspected?

Miss WILLEBRANDT. Not on that statement of facts.

Mr. RALSTON. Then I ask you, suppose they have taken out engines which have not been inspected in accordance with the rules, could you not have that prohibited?

Miss WILLEBRANDT. If I believed that an injunction would lie, and I found that they had failed to do that, the prayer would undoubtedly be to compel them to make inspections.

Mr. RALSTON. Have you communicated to Mr. Stevenson and Mr. Horn at any time the result of your investigation?

Miss WILLEBRANDT. Our investigations have not closed.

Mr. RALSTON. You are still investigating?

Miss WILLEBRANDT. We would be delighted to receive evidence at any time——

Mr. RALSTON (interposing). However, I asked you if you had communicated that to them?

Miss WILLEBRANDT (continuing). And substantiate any of the allegations that have been made in which we felt we could get any relief from a condition which is undoubtedly a grave condition; that is, the fact that the roads now have running many engines that need major repairs, and that there is a much greater percentage of defective engines on the roads to-day than there was before June.

Mr. RALSTON. I do not think you have answered my question. My question was whether you had ever communicated to Mr. Stevenson and Mr. Horn the result of your examinations into the facts, so that they might know what became of their complaints?

Miss WILLEBRANDT. Yes; I have, to Mr. Stevenson.

Mr. RALSTON. When?

Miss WILLEBRANDT. November 27, I believe, is the date.

Mr. RALSTON. Have you that letter?

Miss WILLEBRANDT (continuing). Very close to that time. That was the result of my investigation that far—to that date.

Mr. RALSTON. Will you turn to that letter, please?

Miss WILLEBRANDT. Do you mean my letter?

Mr. RALSTON. Yes.

Miss WILLEBRANDT. No; that was by conference.

Mr. RALSTON. By conference?

Miss WILLEBRANDT. I talked to him personally.

Mr. RALSTON. So that there is no other way that you have communicated the results? I think that is all.

The CHAIRMAN. Is that all, Mr. Howland?

Mr. HOWLAND. That is all.

Mr. HERSEY. Have you anything more on No. 4, Mr. Ralston?

Mr. RALSTON. Nothing more I want to offer.

Mr. HOWLAND. Nothing more on this specification, or nothing more on the charges? I did not understand you, Mr. Ralston. Nothing more on this specification, or nothing more on the charges—which?

Mr. RALSTON. On this specification.

Mr. HOWLAND. On this specification?

Mr. RALSTON. That is all I am speaking of this afternoon.

Mr. GOODYKOONTZ. Mr. Chairman, before Mr. Keller speaks I want to note in the record an excerpt from the so-called Porto Rican case. The title of that case is *People of Porto Rico v. The American Railway Co. of Porto Rico*, and the opinion is to be found in volume 254, Federal Reporter, the decision being by the Circuit Court of Appeals, First Circuit. I read from page 379 the following paragraph:

Holding the view that we do as to the operativeness of the Porto Rican act of March 12, 1908, there seems to be no occasion for discussing the emergency provision of that law; and this results because the substantial relief sought, that of protection to the people of Porto Rico against unauthorized and unlawful rates, may be had under injunction under their original bill by virtue of the force of section 7 of the Porto Rican law.

The court held that the interstate commerce law of the United States had no application to Porto Rico and based its decision entirely upon a specific statute enacted by the Legislature of Porto Rico, which authorized injunctive relief in rate cases.

So that it seems to me that the authority cited to sustain the doctrine that injunction would lie has no application to the case of defective appliances and failure to make boiler inspections of railroads in the United States.

WITHDRAWAL OF HON. O. E. KELLER, A MEMBER OF CONGRESS FROM THE STATE OF MINNESOTA, FROM PROCEEDINGS UNDER H. RES. 425.

The CHAIRMAN. Now, Mr. Keller, do you desire to make a statement?

Mr. KELLER. Yes.

Mr. HOWLAND. If the committee please, under the order of business, I understand the next matter is to take up article 7.

The CHAIRMAN. That, I understand, is the arrangement.

Mr. HOWLAND. Then I ask the committee to take up article 7. Unless this gentleman wants to be sworn as a witness, and to be subject to cross-examination, I call for the regular order of business.

Mr. KELLER. Mr. Chairman, I am not a witness, and I am not here on trial; and I ask the committee to make a statement now which I have prepared.

Mr. JEFFERIS. Mr. Keller, is this purporting to cover facts in this matter?

Mr. KELLER. It relates to Resolution 425.

Mr. JEFFERIS. Is it an argument—or what?

Mr. KELLER. I shall read it, and you can judge for yourself.

Mr. JEFFERIS. Well, the way it would look to me, if this is of the nature of evidence, why, all witnesses, whether rich or poor, and no matter what their position is, in a matter of this kind, should be sworn.

Mr. KELLER. Well, I am making this——



Mr. JEFFERIS (interposing). And I do not think just a mere Member of Congress, or of the Senate, or any other position, relieves him from the general rules and regulations governing all witnesses.

Mr. KELLER. My statement will be on the conduct of the hearings now on House Resolution 425.

Mr. JEFFERIS. On the conduct of them?

Mr. KELLER. Yes.

Mr. BIRD. May I ask my colleague, does this have to do with proceeding or not proceeding with this hearing?

Mr. KELLER. Mr. Chairman, I would like to read my statement that I prepared; and I ask permission to do so.

Mr. BIRD. Certainly my colleague will be courteous enough to answer a question of that kind.

Mr. KELLER. I am here to read the statement that I prepared, Mr. Chairman.

Mr. FOSTER. The whole gist of the matter is, that we are ready for No. 7, for testimony on No. 7; but Mr. Keller tells us that he has no testimony to give, but he has a statement to read on the conduct of the committee.

Mr. RALSTON. He has not said anything about the conduct of the committee.

Mr. GOODYKOONTZ. Your object is to lecture the committee, is it?

Mr. KELLER. If I see fit.

Mr. MICHENER. I submit, Mr. Chairman, that if he is a witness, he should be sworn.

Mr. KELLER. I am not a witness.

Mr. MICHENER. Well, we can make you one very quickly.

Mr. KELLER. Mr. Chairman, I ask to make a statement before this committee.

The CHAIRMAN. I do not think you should try to coerce this committee to hear you.

Mr. YATES. Is this statement to be made for the committee or for the press?

Mr. KELLER. I want to make a statement——

The CHAIRMAN (interposing). Sit down.

Mr. KELLER. I have not given it to the press. It is in my hands, to be made now.

Mr. YATES. About the conduct of this hearing?

The CHAIRMAN. Sit down.

Mr. YATES. I refuse to sit down, Mr. Chairman.

The CHAIRMAN. If you refuse to sit down, we will have to take steps to make you.

Mr. KELLER (interposing). And if you refuse to hear me right now, I will give the letter to you, Mr. Chairman, and you can read it.

The CHAIRMAN. I do not care to take it.

Mr. KELLER. And I want to say to you that you should take that letter, and I want to say——

Mr. HOWLAND (interposing). I object to the committee hearing this man unless he is sworn.

The CHAIRMAN. Mr. Keller, you have not any right to control this committee in its proceedings.

Mr. KELLER. I am not trying to control the committee.

The CHAIRMAN. Yes you are; the committee insists on controlling the proceedings.

Mr. KELLER. I am trying to make a statement before the committee.

The CHAIRMAN. You have no right to insist on that any more than anyone else would have.

Mr. KELLER. I ask the right to address the committee, and I am going to ask you whether you are going to refuse to hear me on that statement.

The CHAIRMAN. If you will be sworn——

Mr. KELLER (interposing). I do not have to be sworn.

The CHAIRMAN. Well, we will have you sworn; we will serve a subpoena upon you; you can not bully this committee.

Mr. KELLER. Mr. Chairman, it is improper for you to say that. And I want to say to you now that, if I can not be heard on that statement now, I refuse to proceed any more on this proceeding, nor do I expect to present any more evidence. I am through with you, unless I can present that statement.

#### SUBPOENA OF HON. O. E. KELLER.

The CHAIRMAN. That is exactly what I expected from you from the first.

Mr. JEFFERIS. I move, Mr. Chairman, that he be subpoenaed as a witness.

The CHAIRMAN. Mr. Clerk, give us a subpoena for Mr. Keller, and have the Sergeant at Arms serve it upon him. He is insulting this committee and trying to run it just to suit himself.

#### WITHDRAWAL OF MR. JACKSON H. RALSTON, ATTORNEY FOR HON. O. E. KELLER AND THE AMERICAN FEDERATION OF LABOR, FROM PROCEEDINGS UNDER HOUSE RESOLUTION 425.

Mr. RALSTON. Mr. Chairman, in view of the statements which will appear in that letter, I am compelled respectfully to withdraw my personal appearance before the committee. I want to express my own appreciation of the personal courtesy which has been extended to me.

Mr. YATES. Now, of course, this is a grandstand play, intended and staged for this purpose.

Mr. HOWLAND. Mr. Chairman, we are ready to proceed under article 7. Our witnesses are here, and we will proceed to produce testimony under every article and specification that has been filed before this honorable committee and the Congress of the United States. We have had our district attorney here from New York and his assistant on these antitrust cases. We have been at work on these specifications, in good faith, for a week or 10 days, with the whole department here, trying to get the testimony ready on these subjects and we are ready now to proceed.

#### COMMITTEE VOTE TO PROCEED.

Mr. MICHENER. Mr. Chairman, for my part, as I have stated on innumerable occasions, I believed that, as these charges had been made, there should be a thorough investigation.

Now, regardless of what Mr. Keller may be asking as to the continuance of these charges, I ask that we proceed and that the committee go into the investigation and subpoena him. There are various witnesses who have made statements about having evidence against the Attorney General and charged against him; so that I think we should have a full investigation, showing what this all amounts to. If there is anything wrong, I think the country should know it. And I think it is our duty——

Mr. HOWLAND (interposing). I quite agree with the gentleman, and if there is nothing wrong——

Mr. MICHENER (interposing). The country should know it.

Mr. HOWLAND. Yes; and going a little further, the Attorney General has a right to know it.

Mr. CLASSON. That is right.

The CHAIRMAN. In view of the situation, I do not know that there is any need to hold an executive session on the subject. Those in favor of continuing with the proceedings, will hold up their hands.

(A vote was taken, and it was unanimous in favor of proceeding.)

Mr. HERSEY. Mr. Chairman, will we take up specification No. 7?

Mr. JEFFERIS. Mr. Chairman, I think that these charges, and what has occurred here, are so serious that we ought to go through with them and find out all we can, because the people of the United States have an interest in knowing whether their Government is functioning or not; they are entitled to have some confidence in their Government, if the facts warrant it; if they do not, they should ask us to proceed.

Mr. CHRISTOPHERSON. This committee has changed its procedure two or three times in order to accommodate them in bringing in their testimony, and now I think that we should go ahead and finish with it in our own way.

The CHAIRMAN. Yes; when we made a suggestion they have done just exactly the opposite thing; when we asked them to do one thing, they have refused to do it, and we have had to accommodate ourselves, step by step, to them, and we have done what they have insisted upon all the way through; and it is perfectly evident that this was what they were playing for all the time, in order to get out of it after all of this trouble.

Mr. FOSTER. Mr. Chairman, we are here under a resolution of the House of Representatives, to investigate these charges under these specifications against the Attorney General. Personally, I regret that the gentlemen have taken the course that they have; but our duty in the matter is plain, as a committee of the House of Representatives. If they want to come back again, all right; and if they do not, our duty is plain, and that is to investigate the charges and specifications under this resolution.

The CHAIRMAN. Yes, that is our plain duty.

Mr. MICHENER. I have suggested that Mr. Keller be subpoenaed. Now, as to the future procedure, I will say, so that I may not be misunderstood, that it is my notion that Mr. Keller stood on the floor of the House and said repeatedly that he had the proof to substantiate his charges. Now, I think it is highly proper that Mr. Keller should next be brought in before the committee as a witness and be sworn; and if he has any of these facts, he will be able to give us the names of the parties, and those from whom he has received his information; and he should be able to present to this committee, to the Congress,

and to the country the authority for his charges; and our future proceedings will largely, I should say, be guided by the information which Mr. Keller, under oath, brings us.

Mr. CLASSON. And if he has no knowledge of these matters, he ought to be made to admit that he impeached a Cabinet officer without any knowledge or information.

The CHAIRMAN. He will be subpoenaed and will be brought here to testify.

Mr. FOSTER. Mr. Chairman, I suggest, in view of the situation, that we take a recess until half past seven, at which time we may expect Mr. Keller as a witness.

The CHAIRMAN. We can have Mr. Keller here in five minutes.

Mr. FOSTER. Then I withdraw the suggestion.

Mr. SUMNERS. Mr. Chairman, there is only one suggestion I desire to make; I do desire to make one suggestion as to this procedure: It is not clear to me just what the chairman has in mind with reference to procedure, how we shall proceed.

The CHAIRMAN. In the first place, I think a subpoena ought to issue, as I have directed, so that we may call Mr. Keller first and find out what witnesses he has and what information he has that he can furnish to this committee. He has made these charges, and he ought to give us that information. I do not feel as if we ought to proceed and allow the Attorney General to introduce testimony until we have exhausted what means we have to bring the people who have made these charges before us, so that they may substantiate them to whatever extent they can.

If, however, Mr. Keller does not give us any information, then we will use the best means we can adopt for the purpose of investigating the charges.

Mr. SUMNERS. Then, do I understand you to mean, Mr. Chairman, by that schedule that, if you do not get from Mr. Keller witnesses to testify with reference to these various charges, then that the Judiciary Committee shall, after that time, determine its procedure?

The CHAIRMAN. Well, my idea is that we ought to go on with the investigation.

Mr. SUMNERS. The point I had in mind, to me, is essentially clear. I voted to proceed, as did all the other members. But, now, this will be the situation—perhaps I had better not discuss it now, but wait until you get through; but I do reserve the right of further discussion of the procedure after you have heard Mr. Keller.

Mr. HERSEY. He may develop something.

Mr. SUMNERS. I say, I do reserve the right of further discussion after you have heard Mr. Keller.

Mr. FOSTER. I am hoping that Mr. Keller will reconsider this action taken by him. I think, when he reflects on the gravity of this matter, he will recognize his duty to the House, and the duty of this committee to investigate the charges made in his resolution.

The CHAIRMAN. We will adjourn until half past 10 to-morrow morning.

(Thereupon, at 4.45 p. m., the committee adjourned until 10.30 o'clock a. m., December 15.)

FRIDAY, DECEMBER 15, 1922.

The committee met at 10.30 o'clock a. m., Hon. Andrew J. Volstead (chairman) presiding.

## IN RE SUBPŒNA OF HON. O. E. KELLER.

The CHAIRMAN. The committee will come to order. A subpoena was issued yesterday, at the direction of the committee, for Oscar E. Keller to appear here this morning to testify, and I understand that the subpoena has been served. The chair asks if he is present. If he is, we want him to come forward and be sworn.

Mr. VAHEY. Mr. Chairman, I am asked by Mr. Ralston to hand you a letter.

Mr. MICHENER. Just a minute, so that the record may be complete. Please state your name, occupation, and residence.

## STATEMENT OF MR. JAMES H. VAHEY, BOSTON, MASS.

Mr. VAHEY. My name is James H. Vahey, a lawyer, and I live in Boston.

Mr. MICHENER. Were you one of the attorneys named by Mr. Ralston at the beginning who would represent Mr. Keller on certain specifications here?

Mr. VAHEY. I do not know whether he named me or not; I was not here until day before yesterday; that was the first day I was here.

Mr. MICHENER. He mentioned you as representing Mr. Keller on some of these specifications. Now, do you appear on behalf of Mr. Keller?

Mr. VAHEY. I am associated with Mr. Ralston by bringing here and delivering to the chairman the letter, at Mr. Ralston's suggestion.

Mr. FOSTER. I think the record should show that at the request of Mr. Ralston Mr. Vahey is here, and I think it is pertinent to ask if he appears as counsel of record for Mr. Keller; and if so, state it.

Mr. VAHEY. I appear at the request of Mr. Ralston to deliver a letter, which I have handed to the chairman.

Mr. BOIES. I assume the record will show there is no response by Mr. Keller under the subpoena.

Mr. BIRD. Is Mr. Ralston in the city?

Mr. VAHEY. Yes, sir.

The CHAIRMAN. I will read Mr. Ralston's letter to the committee [reading]:

RALSTON & WILLIS, ATTORNEYS AND COUNSELLORS AT LAW,  
EVANS BUILDING,  
Washington, D. C., December 15, 1922.

Hon. A. J. VOLSTEAD,

*Chairman Committee on Judiciary, House of Representatives, Washington, D. C.*

SIR: Some time last evening Representative Keller was served with a subpoena to appear before your committee at 10.30 o'clock this morning. I was immediately asked to represent him in the matter. Before this, however, I had made certain imperative business engagements for to-day, engagements which I can not forego. I have therefore to say that, without submitting at this time to the jurisdiction of the committee with regard to the subpoena, I am now expecting, at your next hearing, to-morrow or later, to take such position before the committee with regard to the subject as may seem appropriate.

Very respectfully yours,

JACKSON H. RALSTON.



The CHAIRMAN. That, of course, would not furnish any excuse for not appearing. There is no excuse in it, so far as I can see.

Mr. MONTAGUE. Has the subpoena been served upon Mr. Keller?

The CHAIRMAN. The subpoena has been served and the return is here.

Mr. JEFFERIS. I think, Mr. Chairman, the return should be made a part of the record.

The CHAIRMAN. I suggest that the subpoena, with the return, be printed in the record.

(The documents referred to are as follows:)

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE UNITED STATES OF AMERICA.

To the SERGEANT AT ARMS (or his special messenger).

You are hereby commanded to summon Hon. Oscar E. Keller to be and appear before the Judiciary Committee of the House of Representatives of the United States, of which the Hon. Andrew J. Volstead is chairman, in their chamber in the city of Washington on December 15, 1922, at the hour of 10.30 a. m., then and there to testify touching matters of inquiry committed to said committee; and he is not to depart without leave of said committee.

Herein fail not, and make return of this summons.

Witness my hand and seal of the House of Representatives of the United States, at the city of Washington, this 14th day of December, 1922.

F. H. GILLET, *Speaker*.

Attest:

WILLIAM TYLER PAGE, *Clerk*.

Subpoena for Hon. Oscar E. Keller before the Committee on the Judiciary. Served December 15 at 5.50 p. m.

J. G. ROGERS,  
*Sergeant at Arms House of Representatives.*

Mr. FOSTER. The Sergeant at Arms is here. Would it be appropriate to swear him and make a record of the return?

The CHAIRMAN. There is an admission of the service of the subpoena and a return has been made of service; but in view of the fact that no excuse has been furnished I would ask that the Sergeant at Arms who served the subpoena call the name of Oscar E. Keller.

The SERGEANT AT ARMS. Oscar E. Keller. [No response.]

The CHAIRMAN. Call him three times, please.

The SERGEANT AT ARMS. Oscar E. Keller; Oscar E. Keller; Oscar E. Keller. [No response.]

Mr. GOODYKOONTZ. I suggest that the letter also be incorporated.

Mr. MONTAGUE. Is the letter the chairman has read a request from Mr. Ralston for a continuance of the matter so far as pertains to Mr. Keller until to-morrow, the next sitting of the committee?

The CHAIRMAN. It is a request for an extension of time, without any assignment of reason, so far as Mr. Keller himself is concerned.

Mr. MONTAGUE. What time does he ask?

Mr. CHANDLER. Is it a request until the next meeting of the committee?

The CHAIRMAN. I do not think the committee at this time ought to take any further action in regard to it.

Mr. FOSTER. I move that further proceedings in respect of Mr. Keller be postponed until to-morrow morning at 10.30 in line further with the efforts of the committee heretofore made to accommodate him so far as possible.

The CHAIRMAN. All in favor of that—

Mr. GRAHAM (interposing). I do not consider, Mr. Chairman, that there has been any excuse offered here for the nonappearance of Mr. Keller in obedience to the subpoena that has been served upon him. A witness does not need counsel, and the interposition of counsel is an intrusion at this time. Mr. Keller is competent to be sworn and testify, and he was notified several days ago that he would be sworn and examined as to the knowledge of facts which he possessed that prompted him to make this serious charge upon his responsibility as a Member of the House, and certainly this committee ought to know what facts he had in his possession when he made this charge against a Cabinet officer. To make a charge involving impeachment is no light or frivolous thing, and the man who does it takes the responsibility of his conduct upon himself. Thus far there has been nothing but trivial evidence sought to be adduced in this case, and this committee ought to compel Mr. Keller to appear here and submit to examination as to what he knows and about what facts he possessed that prompted him to make this serious, grave charge, and I would, therefore, ask the committee to report the facts concerning the subpoenaing of this gentleman to the House, for such action as the House may deem proper by way of contempt.

Mr. FOSTER. Mr. Chairman, my reason for making that motion was, while I realize this is my first term on this committee and the older members are better acquainted with the procedure under similar circumstances, that we hold the matter open until Mr. Keller may be present so he may have an opportunity to be heard and possibly he may conclude to go ahead with the proceedings. He might care to raise some question as to whether he could be required to testify. Regardless of what the newspapers may say, I am one member of this committee who believes this committee has been making every effort to consider all Mr. Keller has to offer. I am willing to urge further consideration along that line, in order to give him a chance to await the appearance of his counsel and determine his rights before the committee under this subpoena.

Mr. CHANDLER. And because it appears that Mr. Keller is not a lawyer and may want Mr. Ralston's advice.

Mr. JEFFERIS. It seems to me that when a person makes charges like these and then refuses to be sworn in the usual course of all witnesses, it is a confession on his part that the charges were not made in good faith; that they were made for some ulterior motive. I would hate to think that any Member of Congress should undertake to destroy the people's confidence in our Government and in the men that are responsible for its conduct. To my mind, if he does not want to come here, I would take it as a confession of the falsity of the charges, and that they were unfounded and were made in bad faith. It is a disrespect to the Congress and to this committee and to the country.

Mr. CHANDLER. Will my colleague answer this question? We have heard the letter read which was addressed to the chairman of the committee. It seems that the absence of counsel and the absence of Mr. Keller are due to the absence of counsel. There may be some things Mr. Ralston wants to advise Mr. Keller on. Mr. Keller is not a lawyer. Is it not possible that he wants a day in which to determine his rights as a witness?

Mr. BATES. He ought to be here in response to the subpoena.

Mr. CHANDLER. That his attorney should appear for him seems vital.

Mr. JEFFERIS. He has refused from the beginning to be sworn. The first day, as I remember it, he said he would not be sworn; yesterday he refused again to be sworn as a witness, whereas we all know that in any proceeding, in a hearing of any kind, it is customary and it is the law for people to be sworn as a witness when giving facts. We have had before this committee a Senator of the United States, who came here to give evidence; he did not hesitate nor refuse to be sworn by the chairman of this committee, but did so in the usual course of things, and gave his testimony. We have also had Mr. Gompers, a man widely known in labor circles, and who was brought here—that is, he came here as a witness. He affirmed in the manner provided by law. Mr. Wickersham, a former Attorney General of the United States, has appeared here; he did not question in any way the jurisdiction of this committee to swear him in the usual course of procedure.

Mr. CHANDLER. These gentlemen were not Members of the House.

Mr. FOSTER. Speaker Reed, as I recall, on one occasion came voluntarily before one of the committees and testified; but the question raised here was not raised there.

Mr. CHANDLER. I agree to everything that has been said by my friends from Pennsylvania, Nebraska, and Ohio with reference to this committee and the House and these rights.

I further agree that nearly all the testimony that has been given here has been trivial and foolish so far as introduced to date. But I, for one, would not want these men to be in the position to say that we were pressing them in regard to certain matters, and that we were not willing to give them a day in court. I think the motion of the gentleman from Ohio should be carried.

Mr. GRAHAM. I do not want to appear overinsistent in my suggestion. If it is the thought of the committee to give this additional time, I shall acquiesce. There is one thing that has been apparent from the beginning—that the stage, so to speak, has been set twice in the course of these proceedings for some abrupt determination of them. In the beginning Mr. Keller came here and planted himself upon the proposition: "If you don't report this resolution back to the House and have it passed, I go no further."

Mr. JEFFERIS. That was to subpoena witnesses, was it not?

Mr. GRAHAM. No; he wanted the resolution reported to the House. Finally it was compromised, and the chairman agreed to go to the House and ask for power to subpoena witnesses.

I say, it looks to me that at different stages in the proceedings in this investigation the effort has been made to so place the situation that they would have some apparent or seeming cause for withdrawal from further prosecution of the proceedings, because they did not have the facts. Mr. Keller was asked in preliminary questions here before the committee and he clearly disclosed the facts upon which he based the charges, and to my mind it was evident that he was not in possession of the facts. He said he did not know about these specifications; that they were prepared by others and submitted afterwards to this committee. After he had made his charge of

impeachment on the floor of the House. Having said this, I submit before the committee decides to-day——

The CHAIRMAN (interposing). Personally, I think we might as well give him until to-morrow.

Mr. GOODYKOONTZ. Mr. Chairman, my understanding is that the object of bringing Mr. Keller here is for the purpose of procuring the names of the witnesses by which the charges that have been made might be sustained. We have examined all the witnesses he gave us, with the exception of Mr. Richberg. We have insisted on his giving the committee the names of other witnesses, in order that they might be brought here. As it is now, we do not have the names of the witnesses. The House has commanded us to investigate this matter. How can we go ahead with the investigation unless Mr. Keller shall furnish us with the names of the witnesses?

The CHAIRMAN. In connection with that, I might say that the charges have been made by at least two other persons on the floor of the House, though not in the form of impeachment; and one of them, at least, has sent out or published within the last few months a statement saying that he had not had an opportunity to appear and desired that opportunity. I think we ought to give them an opportunity to present whatever they have got.

Mr. JEFFERIS. Are they Members of the House?

The CHAIRMAN. Yes; Members of the House.

Mr. JEFFERIS. I think they ought to have an opportunity to tell what they know.

The CHAIRMAN. I do not know of any reason why they are not with us. We would be glad to have whatever testimony they can furnish or whatever witnesses they can suggest.

Mr. FOSTER. Mr. Chairman, before we go into that matter may I ask this question: Has the chairman of this committee or any member at any time voted to set these hearings at a time when he thought Mr. Untermeyer could not get here?

The CHAIRMAN. Not at all.

Mr. FOSTER. I ask each and every other member of this committee whether they at any time voted to set down these hearings at a time Mr. Untermeyer could not be present?

Mr. GRAHAM. No.

Mr. FOSTER. That has been printed in the papers. I presumed that the setting of the date was in order to accommodate Mr. Keller and his counsel. I just wanted to make this public inquiry, whether any member was conscious of the fact that we were setting the time other than to accommodate Mr. Keller and Mr. Untermeyer.

Mr. BOIES. I think Mr. Untermeyer is in small business to be screaming from his office in New York City with regard to this case and with regard to this committee, or any individual member of it. He ought to come here in the open, like a lawyer, and if he has anything to say as a lawyer in this case, say it.

The CHAIRMAN. I want to say in connection with that that the statement of Mr. Untermeyer was made immediately upon the adjournment in September. That took place three days, or, at most, four days, before the end of that session. We all knew that we could not carry on an investigation of this kind at that time, because everybody was ready to go home; time would not permit it anywhere and it was ridiculous to undertake an investigation of this character, then.

Mr. FOSTER. And we had no power to meet during recess?

The CHAIRMAN. No.

Mr. CHRISTOPHERSON. Mr. Chairman, you may bear in mind that when Mr. Keller was here on that Saturday and asked for a day that put it beyond the day of adjournment of Congress?

The CHAIRMAN. Yes. I may have something to say at a future time about what has been so apparent of the spirit of antagonism shown by Mr. Keller toward the committee, but I do not believe I want to indulge in it now. In attempting to get the witnesses, I have been in contact with Mr. Ralston, Mr. Keller's attorney, and made requests repeatedly for witnesses, but every time the committee has made any requests there has been objection to what the committee wanted. If we wanted anything, it was apparent they did not want it. I have got those letters here.

Mr. FOSTER. What I had in mind, if you will pardon just one more reference, was this: I wanted to determine whether Mr. Keller or his attorneys or Mr. Untermeyer, or any other person interested in the prosecution of these charges, at any time indicated to any member of this committee that we were fixing the time of sitting at a time when it would not be convenient for Mr. Untermeyer?

The CHAIRMAN. Not at all. There has never been a suggestion of that kind, so far as Mr. Untermeyer was concerned, except what was published in the newspapers at the time we adjourned in September, and, as I have just said, two or three days before the end of that session.

Mr. FOSTER. Nothing since Congress reconvened?

The CHAIRMAN. Since Congress reconvened there has been no communication of any kind between the committee or between me and Mr. Untermeyer or anyone else. So far as I know, it would be inconvenient for Mr. Untermeyer to be here.

Mr. FOSTER. And I repeat the question, if possible, to every member sitting on the committee, whether any gentleman sitting on the committee received any communication or any information that we were trying to inconvenience Mr. Untermeyer as to the date of the hearing? [No response.]

Mr. HERSEY. Mr. Chairman, I would like to inquire of Mr. Vahey whether he appears here for the proponents of this proposition or appears for Mr. Ralston or Mr. Keller or anybody connected with the prosecution.

Mr. VAHEY. I intended, if the hearing continued, to appear with Mr. Ralston for Mr. Keller.

Mr. HERSEY. Are you prepared this morning to go on with the prosecution?

Mr. VAHEY. I am not. I am intending to represent Mr. Keller, in connection with Mr. Ralston, if the committee accedes to the suggestion made in Mr. Ralston's letter.

Mr. CHANDLER. Are you prepared to say that if this committee adjourns until to-morrow that Mr. Ralston and Mr. Keller will be here?

Mr. VAHEY. I am prepared to say that Mr. Ralston will be here. Whether Mr. Keller will be here, I do not know.

Mr. FOSTER. If I understand it, Mr. Ralston has stated you were to appear for Mr. Keller on specification No. 11; is that correct?

Mr. VAHEY. What is No. 11?



Mr. FOSTER. I do not remember. I have a notation here that you would appear in connection with No. 11. And I thought perhaps you would know what it was.

Mr. VAHEY. I came here to assist Mr. Ralston in the presentation of the evidence to the committee. If the hearing had not been terminated by Mr. Keller's letter yesterday to the committee, I should have presented some evidence to the committee.

Mr. FOSTER. On what specification, may I ask?

Mr. VAHEY. I intended to assist in the presentation of evidence concerning, I think, specification No. 9.

Mr. BIRD. What is the subject matter of that specification?

Mr. VAHEY. About the railroad injunction.

Mr. MICHENER. That is No. 7; that is the one we are going on with next.

Mr. CHANDLER. Is Mr. Keller's nonappearance due to the enforced absence of Mr. Ralston?

Mr. VAHEY. I think so; yes, sir.

Mr. CHANDLER. There is no reason why Mr. Keller would not appear to-morrow?

Mr. VAHEY. I do not know of any reason why he would not physically appear; whether or not he will recognize the authority of the committee to examine and swear him, I do not attempt to advise upon now. Mr. Ralston is chief counsel, and I am perfectly willing to let him give his own views in his own way.

Mr. JEFFERIS. Mr. Chairman, there is another thing that seemed a little peculiar here to me, perhaps due to my brief experience on this committee. It was stated here in connection with the last specification that the Brotherhood of Locomotive Engineers, and, I think, the Firemen, neither of which organization, as I understood their counsel and the witnesses, had ever suggested or advised or participated in any way when these charges were brought in here, apparently to substantiate them, from the questions answered, upon inquiry by Mr. Sumners, Mr. Howland, Mr. Foster, and Mr. Michener of the committee it seemed that these organizations felt that they had no grounds for impeachment of the Attorney General.

Mr. VOLSTEAD. Let me call your attention to one thing that I think ought to go in the record——

Mr. JEFFERIS. It seems to me it is leaving those organizations in a position that is unfair to them, unless they just complied with the subpoenas, which I suppose they did.

Mr. FOSTER. May I have the attention of the chairman in that connection? Mr. Stevenson is here as an attorney. There was a suggestion awhile ago that he might care to make a statement in that connection. Mr. Stevenson, would you care to make a statement?

Mr. STEVENSON. The gentleman has said all that I had in mind, that we did not want to be left in this predicament as appearing as prosecutors; we are not prosecutors. We are in exactly the position that has been expressed there.

Mr. FOSTER. That is, by Mr. Jefferis.

Mr. STEVENSON. Yes, sir.

The CHAIRMAN. Let me call your attention to this: The impression was evidently left by newspaper statements that I have seen of what occurred last night, that the reason why Mr. Keller "withdrew," as

he calls it, was because we refused to allow his statement to be read at that particular time. That is not correct. His statement which he left upon the desk shows, in the very act of leaving it there, that it was a declaration that he was not going to appear any further in the matter. So that it was not due to our refusal. He came here and refused to go on and tried to get an opportunity to do it in connection with a lot of abuse of this committee.

Mr. JEFFERIS. In other words, just as if the chairman had allowed him to read his whole statement, it would have permitted the counsel to go ahead regardless of the refusal to allow him to read it.

The CHAIRMAN. Yes. Another thing, he makes the statement in this communication to the committee that he has abundant testimony to establish all these charges. He reiterates that; and then he refuses to go on.

Mr. CHRISTOPHERSON. I certainly think we ought to have him here and get that information.

Mr. SUMNERS. The situation that confronts the committee is what will the committee do. The gentleman who has just appeared here has left me somewhat in doubt as to what his relationship is to be with the future proceedings of this committee, whatever they may be. It was not clear to me whether or not you contemplated your connection with this proceeding was dependent entirely upon Mr. Ralston's continuance to represent Mr. Keller in this matter. In other words, does the committee understand that you go out with Mr. Ralston, and if Mr. Ralston has finally severed his relationship with this committee that you want the committee to understand you also are not to be looked to to assist in the presentation of the facts to the committee with regard to No. 7 or any other specification?

Mr. VAHEY. I think you state it, sir, with accuracy. I was with Mr. Ralston until Mr. Keller, who was our client, removed himself; and then Mr. Keller asked Mr. Ralston and myself to represent him in regard to any future proceedings concerning him.

Mr. HERSEY. Does it depend upon future proceedings concerning him before you will continue as counsel?

Mr. VAHEY. I understand Mr. Keller's letter definitely ended his prosecution of the charges before this committee, unless the committee has the authority and the power to compel him to testify.

Mr. HERSEY. Well, your authority and that of Mr. Ralston in the future is to look after the rights of Mr. Keller as a witness only; is that right?

Mr. VAHEY. I will not say that, sir. It may be that, depending somewhat upon the outcome of the matter. The next time you meet we may have some different idea of it. At present we represent Mr. Keller.

Mr. HERSEY. As a witness only?

Mr. VAHEY. We represent Mr. Keller.

Mr. JEFFERIS. As a witness?

Mr. VAHEY. Whatever rights he has got; we do not represent him as a witness, because he is not a witness.

Mr. SUMNERS. You represent him under the subpoena?

Mr. VAHEY. Yes, sir.

Mr. SUMNERS. You represent him in whatever matters grow out of the issuance of the subpoena?

Mr. VAHEY. Yes, sir. Mr. Ralston was careful in his letter to reserve the question of whether or not the committee had the right to issue a subpoena to a Member of the House.

Mr. JEFFERIS. And you felt that when he left here yesterday that left you without a client, in so far as the prosecution of these charges is concerned?

Mr. VAHEY. I understand that Mr. Keller declined to prosecute the charges any further, and therefore Mr. Ralston and I went out with him when he left.

Mr. JEFFERIS. You do not have any client left?

Mr. VAHEY. No, sir; because Mr. Keller was the only client we could get.

Mr. BIRD. You are not appearing now generally in this matter?

Mr. VAHEY. I am appearing for the purpose of delivering to the chairman of the committee Mr. Ralston's letter; and I will be very glad to take to Mr. Ralston any message which the chairman of the committee wishes me to.

Mr. BIRD. But are you appearing generally in relation to these charges?

Mr. VAHEY. I am not.

Mr. CHANDLER. Then why was it that Mr. Ralston stated when he appeared in the case that he appeared for the American Federation of Labor? He did not say he appeared for Mr. Keller.

Mr. VAHEY. I notice the record says he appeared for Mr. Keller. I was not here the first day or part of the second; but I notice in the record of the committee that it shows that Mr. Ralston appeared for Mr. Keller.

Mr. CHANDLER. That is not the statement that he made when he appeared here; and Mr. Gompers also testified that he appeared for him.

Mr. VAHEY. That is what the printed record shows.

Mr. FOSTER. My recollection is that you are both right. Mr. Ralston stated that he appeared for Mr. Keller, and Mr. Gompers stated that the American Federation of Labor paid him to appear.

Mr. VAHEY. Well, nobody has paid me.

Mr. FOSTER. I want to ask you this question: Under the resolution we are proceeding under, after we finished charge No. 4, we were to take up charge 7?

Mr. VAHEY. Yes, sir.

Mr. FOSTER. If Mr. Keller had stayed would you have been one of the attorney under charge 7?

Mr. VAHEY. I had assisted Mr. Ralston in preparing it.

Mr. FOSTER. Well, would you be in it now?

Mr. VAHEY. I would.

Mr. FOSTER. Are you now appearing for Mr. Keller as one of the attorneys under charge 7?

Mr. VAHEY. I appear before the committee as Mr. Ralston's messenger boy to deliver to Mr. Volstead Mr. Ralston's letter.

Mr. FOSTER. I understood that.

Mr. VAHEY. That is the only reason I appeared here this morning; and I do not appear here generally, or specially, or in any other way, except to do that one thing; and I have done it.

Mr. GOODYKOONTZ. I think counsel has made that clear.

Mr. FOSTER. My question is, Do you appear under charge 7?

Mr. VAHEY. I have stated just what I appeared for.

Mr. FOSTER. And that is all?

Mr. VAHEY. That is all, sir.

Mr. HERSEY. Do you understand that Mr. Keller has abandoned any further evidence before this committee?

Mr. VAHEY. I am obliged to take Mr. Keller's letter as it reads; and I understand that it makes Mr. Keller's position perfectly clear: that he declines to present any further evidence to this committee, but will to some other committee.

Mr. GOODYKOONTZ. Well, we have no desire to invade Mr. Keller's rights. We will be glad to have any authorities he may possess tending to sustain his position in challenging our right to bring him to the bar and testify, the same as any other witness. You will provide us with those authorities by to-morrow morning.

Mr. VAHEY. We will be prepared to argue it.

Mr. GOODYKOONTZ. Thank you.

Mr. CHANDLER. You are convinced that both Mr. Keller and Mr. Ralston will be here to-morrow if this committee adjourns to that time?

Mr. VAHEY. I am not authorized to say that Mr. Keller will be. I am authorized to say that Mr. Ralston will be here, without reference to Mr. Keller. Whether Mr. Keller will be depends on what advice Mr. Ralston gives him about it after he has fully investigated the matter.

Mr. JEFFERIS. Mr. Chairman, are there any other witnesses subpoenaed in these charges that we can go ahead with, or any other prosecutors?

The CHAIRMAN. No one else that I know of that is appearing in the attitude of prosecutor; but I think Mr. Richberg is here.

Mr. FOSTER. May I suggest, Mr. Chairman, that Mr. Richberg is here under subpoena as a witness for Mr. Keller; he is also attorney for the defendants in the Chicago injunction case. I think before he is sworn—my personal motion is, if he cares to do so, he should be permitted to favor the committee with his wishes in the matter, without reference to Mr. Keller. He is only here in response to that subpoena, and I think we should give him the privilege of making a statement.

The CHAIRMAN. Let us dispose of No. 7.

Mr. FOSTER. That is what I referred to.

Mr. GRAHAM. We have not disposed of the question as to what action to take as to Mr. Keller.

The CHAIRMAN. I understand we are to take that matter up at our next meeting.

Mr. FOSTER. At 10.30 o'clock to-morrow morning.

The CHAIRMAN. I did not mention any time.

Mr. FOSTER. I said that because that was the time suggested.

Mr. BIRD. My motion is for 10 o'clock to-morrow morning.

The CHAIRMAN. We will now vote upon the motion.

(A vote was taken.)

The CHAIRMAN (continuing). In the opinion of the Chair, the "ayes" have it.

Mr. FOSTER. I have a suggestion pending that we hear Mr. Richberg if he cares to make a statement.

The CHAIRMAN. Is Mr. Richberg here?

**STATEMENT OF MR. DONALD R. RICHBERG, ATTORNEY AT LAW, CHICAGO, ILL.**

Mr. RICHBERG. I would like to state my position, briefly so that there might be no misunderstanding of it.

I am here in response to a subpoena issued, I understand, by the committee. I have had nothing to do with the investigation or institution of these charges. I am not here in any way as an attorney representing any prosecutor. I am in the position of an attorney in a pending case brought by the Attorney General, which is made the subject of one of the charges here. Under those circumstances, I doubt the propriety of my taking any part in any way in prosecuting charges against the Attorney General.

However, I respect the subpoena of the House, and I have come here in response to it, and I am ready to answer any questions that you may see fit to ask me under the circumstances. But I think my position should be made entirely clear. I am simply responding as an individual summoned by this committee and not as a person in any way connected with the institution of these charges.

Mr. JEFFERIS. You had nothing to do with preparing them?

Mr. RICHBERG. I had nothing to do with preparing the charges, except this, that I was asked by Mr. Ralston to state certain facts in my possession—certain positions taken in the case, which, as I stated to him, were matters of public record—as I would have stated to anyone else. I did not assist in preparing the charges, however, except in so far as answering the questions was concerned.

Mr. FOSTER. In other words, you are not in the position of prosecuting?

Mr. RICHBERG. In no way.

Mr. GRAHAM. Mr. Chairman, I do not think the committee ought to insist upon calling this gentleman as a witness. I think he has stated the true and correct ethical principle in the statement which he has made. I think he ought to be excused.

Mr. FOSTER. Was Mr. Stevenson subpoenaed as a witness on No. 7?

The CHAIRMAN. He was subpoenaed generally, without directions as to any particular charge.

Mr. FOSTER. Has counsel for Mr. Keller stated at any time that he was to be used in connection with that charge?

Mr. MICHENER. I think counsel said he was to be used in connection with the injunction charge, whichever that is.

The CHAIRMAN. I think it was in connection with both of those charges, in connection with No. 4 and No. 7.

Mr. RICHBERG. Mr. Chairman, may I state in connection with the Chicago injunction case the fact that Mr. Stevenson also appeared in that case, although not appearing as attorney of record; but he was associated with the counsel for the defendants in that case.

Mr. FOSTER. Is it the fact that he bears toward charge No. 7 somewhat the same relation that you do?

Mr. RICHBERG. Somewhat the same relation that I do.

Mr. JEFFERIS. I would like to inquire, Mr. Chairman, whether there is any person here this morning who wants to assume the duty of prosecutor to go on with those charges—No. 7 or any of the others?

Mr. FOSTER. We might go a step further. If no one wishes to assume the position of prosecutor, does any one wish to be heard on No. 7? That is the next inquiry.



Mr. SUMNERS. Mr. Chairman, it has occurred to me that the gentleman who has just addressed the committee, if I understood his statement correctly, said that he did furnish some facts of record which he was able to furnish without embarrassment, that were received by those who prepared these charges.

I fully appreciate his position. I am wondering whether any of those facts of record which he presented without embarrassment might be ascertained by the committee to be valuable to it in determining what it should do in relation to charge No. 7. I only make that suggestion because this is a witness who has come from a long distance and I assume that he wants to return. And I wondered if, while he was here, the chairman or some other member might care to interview him?

Mr. BIRD. Do I understand from my colleague that that would be in the nature of furnishing to this committee just what he furnished to Mr. Keller?

Mr. SUMNERS. No; I did not so say.

The CHAIRMAN. Pardon me. I do not think their relation to that lawsuit should interfere at all, because what we have asked them is to furnish the facts, and we have a right to inquire about that; they can furnish us whatever facts they have. They have made their position plain by saying that they are not volunteers in the matter; they are not here for the purpose of attacking the courts or the Attorney General because of any spleen on their part. The facts could properly be received by us, and I think we have a right to ask them what the facts are.

Mr. FOSTER. Mr. Chairman, in view of the fact that nobody seems to be here to further prosecute charge No. 4, and in view of Mr. Richberg's statement as to both his and Mr. Stevenson's relation to the Chicago case, and since the question of Mr. Keller testifying further will come up to-morrow morning, and since we agreed to take up to-morrow morning No. 7, if the committee is favorable, I favor adjourning now until 10.30 to-morrow morning, to determine whether Mr. Keller is prepared to go on with No. 7 and see if he has anything to present.

The CHAIRMAN. That might be a good idea. Here is the situation, as has just been suggested, there are other parties who have made complaints, and it is better, perhaps, that they should be notified in the meantime to appear, if they see fit, or wish to come here to testify as to matters that the attorneys wished to present.

Now, I think it would be a good idea to ask both Mr. Stevenson and Mr. Richberg, if they can, to return here to-morrow, because I think it is our duty to go on with the investigation when they come here with attorneys for that purpose.

Mr. YATES. I think so. I would like to ask Mr. Richberg if it is possible for him to be here to-morrow.

Mr. RICHBERG. I can be here to-morrow if the committee so desires. I will follow the wishes of the committee.

Mr. YATES. I would like for you to be here.

Mr. RICHBERG. May I make this suggestion, however, that all of the facts submitted by Mr. Ralston are embodied in the printed documents, which are a part of the record of the court and can be submitted to this committee.

The CHAIRMAN. Have you got that?

Mr. RICHBERG. Yes. It includes the bill filed by the Government, one of the affidavits of the defense, the affidavit of Mr. Jewel, the answer of the defendants, all of them, and briefs filed by the counsel for the Government and for the defendants.

Now, all of the matter which I could state to this committee is embodied in those documents, except so far as I might be asked to comment or explain them, and I think that the committee will probably agree with me that I would be in a rather embarrassing position if I were to be asked to comment on them. It would amount, practically, to argument of the case to the committee.

Mr. FOSTER. While the matter is pending in court.

Mr. RICHBERG. In that suit. As a matter of fact, in the record, will be found the charges against the Attorney General's conduct of the suit. So that the question involved here, so far as that is concerned, is covered in that suit, in that record.

Mr. JEFFERIS. And it is pending before a court?

The CHAIRMAN. Will you bring those before the committee to-morrow?

Mr. RICHBERG. I can present them to the committee to-day. I can file them with the chairman.

The CHAIRMAN. Suppose that you file them with me.

Mr. RICHBERG. Unless it is the desire of the committee that I remain, I should like to be excused, but I do not wish to ask the committee to inconvenience itself on my account, because I can stay.

Mr. FOSTER. In view of the statement that the gentlemen has made that he can furnish everything, and that it is all included in that record, why shouldn't we let him go now?

Mr. CHANDLER. Somebody might wish to ask him some questions.

Mr. DOMINICK. He was subpoenaed at the request of Mr. Keller?

The CHAIRMAN. I suppose so. He caused the subpoena to be issued. It was issued at his request.

Mr. DOMINICK. Do you think we should excuse Mr. Richberg at this time?

The CHAIRMAN. Personally, I do not think that we should.

Mr. FOSTER. I withdraw my suggestion.

Mr. DOMINICK. Mr. Keller might have a different idea to-morrow.

Mr. MICHENER. Well, Mr. Richberg wants to file them.

Mr. JEFFERIS. That is a part of a proceeding that is pending in the Chicago case?

Mr. RICHBERG. They are arguments that are made by both sides.

Mr. JEFFERIS. Arguments. In other words, you would submit to this committee everything that has been submitted to the Chicago court?

Mr. RICHBERG. Not everything.

Mr. JEFFERIS. Then if this committee acted on what you bring in, we will also be deciding or passing upon a matter which is now at this time pending before a court for decision.

The CHAIRMAN. I do not think so, necessarily.

Mr. RICHBERG. Not absolutely necessarily. Of course the committee might cover the same ground.

Mr. JEFFERIS. Practically so.

Mr. RICHBERG. But I will state this to the committee, that the record presented in Chicago covered a great deal of data, and during the 10 days I believe that there were over 2,000,000 words taken in the record, so naturally what I submit could not cover the Chicago record.

Mr. MICHENER. Pleadings?

Mr. RICHBERG. It would be mostly pleadings.

Mr. MICHENER. Without proof.

Mr. RICHBERG. And certain arguments in the matter.

Mr. MICHENER. But if we want to have before us all of the facts on those pleadings, it will be necessary for us to bring in all of the proofs, which is the testimony in that case, which would necessarily be the 2,000,000 words?

Mr. RICHBERG. A considerable part of it, possibly.

Mr. MICHENER. Whatever is necessary. In other words, if you just file the pleadings on your side and the Attorney General files the pleadings on his side of the case without any comments, that would not cover all of the record. If we want to go into the details, we necessarily would be obliged to have the evidence that was taken before that court.

Mr. FOSTER. Mr. Richberg, in view of the remarks made by my colleague, Mr. Dominick, I think that perhaps you should remain until to-morrow, in order that we may have an opportunity to learn of Mr. Keller's course.

Mr. RICHBERG. I am entirely willing to govern myself according to the wishes of the committee.

Mr. FOSTER. I do not think that we should act now because it may be that he may have some questions that he may want to ask you.

Mr. JEFFERIS. Then, you think that Mr. Keller will come before the committee?

Mr. FOSTER. I hope he will.

Mr. DOMINICK. In this connection, Mr. Chairman, I think it ought to go on the record. I presume that the only witnesses that have been subpoenaed have been subpoenaed at the request of Mr. Ralston and Mr. Keller.

The CHAIRMAN. That is all.

Mr. STEVENSON. Is it the suggestion of the committee that I remain until to-morrow morning.

The CHAIRMAN. If you please.

Mr. STEVENSON. I would like to be excused if I could. I stayed until this morning, and in order to do so I had to put over some very important matters that I can attend to to-morrow morning. I think that you are through with me, but there might be some other questions that you would like to ask. Now, I am in exactly the same position as Mr. Richberg with relation to the Chicago matter.

The CHAIRMAN. Is there anything that you testify to that Mr. Richberg can not testify to?

Mr. STEVENSON. I know infinitely less about the case than Mr. Richberg does.

Mr. FOSTER. Mr. Stevenson is not in the same position as Mr. Richberg, should Mr. Keller decide to proceed to-morrow morning.

Mr. STEVENSON. Yes, sir; and I have no reason to think that Mr. Keller had any idea of using me in this connection, because I was never interviewed about it.

Mr. FOSTER. Yes; but do you know that if this committee excuses you Mr. Keller will not to-morrow morning come in and complain that we have excused his witnesses and we will not have any trouble about it?

Mr. STEVENSON. Well, if he excuses me, will you gentlemen excuse me?

The CHAIRMAN. If he excuses you, there might be some one else who wants to ask you some questions.

Mr. JEFFERIS. I think that the committee as a whole intended to give Mr. Keller full latitude to follow his charges up and present evidence so we could see what they amounted to.

Mr. STEVENSON. If you will feel better, I will stay.

Mr. JEFFERIS. Of course, if he avails himself of the opportunity to get away from testifying, and keeps the facts to himself, we have to——

Mr. FOSTER (interposing). But what do you say to this proposition: If Mr. Keller is willing to release this witness, why shouldn't the committee be willing to release him?

Mr. HICKEY. I believe that he should be excused.

Mr. BOIES. Mr. Keller seems to be out of this case.

Mr. FOSTER. If Mr. Keller is willing to let him go, and makes a statement to that effect, I think that we should be willing to let him go.

The CHAIRMAN. If he will make a statement to that effect, I think that we could allow him to go.

Mr. BOIES. Do you know anything, or can you establish anything, that can not be established by the records?

Mr. RICHBERG. I am perfectly willing for Mr. Stevenson to be excused, if that may be of any value. If you want me to get a written statement from Mr. Keller, I will be glad to do that.

Mr. FOSTER. The point that I would like to suggest is that the gentlemen representing Mr. Keller are willing for him to go.

Mr. SUMNERS. Mr. Chairman, I think that the committee ought to take the responsibility of excusing this witness. He has appeared and testified fully, and both sides have had an opportunity to examine him, and I think that we should let him go home.

The CHAIRMAN. Subject to telegraphic instructions from the committee.

Mr. CHANDLER. Everybody knows that this man is willing to come back if we wish him to.

Mr. JEFFERIS. He will come if the committee wants him. You will come if we ask you to come?

Mr. STEVENSON. Yes, sir.

The CHAIRMAN. If you will come in response to a telegram when we need you, I will excuse you.

Mr. YATES. I vote no. I am in favor of retaining every man that Mr. Keller has subpoenaed.

Mr. MICHENER. All of their lives?

Mr. YATES. If necessary.

The CHAIRMAN. The gentleman has already given his testimony. It does not seem necessary to detain him any longer. He has said that he is willing to come back if we ask him to.

Mr. CHANDLER. The gentleman is very accommodating, and says that he will come back in response to a telegram.

Mr. YATES. There is no question about that, Mr. Chandler. I do not want to put myself in the position where Mr. Keller could say that we have excused his witness.

## IN RE MACAULEY PAPERS.

The CHAIRMAN. Let me say this in correction of some statements that have been published. Temporarily there was an absence here of one of the documents. It disappeared and was supposed to have been lost, but I would like to call to the attention of the public the fact that that document was left with me. It had disappeared, and evidently my good friends, the newspapers, who are sometimes anxious to say something that is very readable called attention to that fact, but those papers that were supposed to be lost were in the custody of the proper parties. They were received by me from the Attorney General's office and I remember handing them to somebody, but I did not remember very distinctly who it was. Upon examination of the files up in the Attorney General's office yesterday it was found that they were there in custody of the proper officials.

Mr. YATES. They are here now this morning.

The CHAIRMAN. They are here this morning.

Mr. BOIES. And the printed matter referred to also?

The CHAIRMAN. Yes.

Mr. FOSTER. And they are going to be put in the record?

The CHAIRMAN. They are going to be put in the record, except such parts as have no relation whatever to the case. There is a lot of stuff in here that has no bearing on the case, such as an article on spraying——

Mr. FOSTER (interposing). Just a minute——

The CHAIRMAN. It is a whole newspaper. You would not want to print in the record a large daily issue?

Mr. FOSTER. Mr. Chairman, if you will permit me just a minute, I want to say that I think the committee assured Mr. Ralston, when the gates were opened, day before yesterday, that all exhibits attached to the Macauley letters might go in. I think that we said that he would have an opportunity to insert in the record all of these exhibits attached to the letter; therefore I think we ought to know whether he wants it to go in just as it is. A part of it, of course, is perhaps immaterial.

The CHAIRMAN. We should just simply put in what has relation to the case.

Mr. GRAHAM. Do you think that the advertisements ought to go in?

Mr. FOSTER. I think that we ought to know what Mr. Ralston wants to go in.

The CHAIRMAN. We intend to put in everything that has the remotest connection with any of the facts, but not ordinary news items that have no relevancy at all, advertisements, pictures, cartoons, and things of that kind. We do not expect to print those.

Mr. FOSTER. I would say not, but I think that we should wait until to-morrow morning and find out what Mr. Ralston wants to go in.

The CHAIRMAN. We can put in everything, if the committee says so.

Mr. MICHENER. Mr. Chairman, as I understood that letter, there were certain inclosures included with it, certain references to editorials, commenting about those editorials, and that those editorials were inclosed in marked newspapers.

The CHAIRMAN. No; they are not marked. It is just an ordinary newspaper with ordinary articles. Of course if you are going to put



all of that stuff in, which does not have the remotest connection with this subject, but just ordinary articles, just simply news items, we are going to encumber the record unnecessarily. I do not see why we should encumber the record with it.

Mr. HICKEY. Can we adjourn until 10.30 to-morrow morning?

The CHAIRMAN. I think that is pretty generally understood.

Mr. HICKEY. Has that motion carried?

Mr. CHANDLER. No.

Mr. HICKEY. I ask that the motion be put.

Mr. FOSTER. Mr. Chairman, would it not accomplish the desired purpose, so far as this newspaper is concerned, if we would submit it to Mr. Ralston and let him indicate what he thinks should go into the record?

The CHAIRMAN. Let him indicate the articles.

Mr. GRAHAM. We are going to make this record so voluminous that no one is going to look at it or read it.

Mr. BOIES. I want to make one suggestion regarding this document that is supposed to have been lost. I would like to have the newspaper men have an opportunity to examine it for the purpose of allowing them to determine what sort of testimony the prosecution in this case have sought to introduce, because anyone will know that that testimony has no place in this case. While this committee has opened the doors wide for anything that savored of competency, anyone could see that this document, which they complain of having been, and want the public to think some one had, stolen, was totally incompetent.

Mr. CHANDLER. What would the country think if you tell them what we are admitting—the kind of evidence?

Mr. BOIES. They would think that we are idiots, as well as the charge we are trying to whitewash some one. I resent the charge of the gentleman from New York sitting down there. I want to say that I am sitting here, as I am sitting here, not because of choice but because I happen to be a member of this committee. I do not want to be accused by some man who knows nothing about it of dishonesty. I do not claim anything more for myself than I do for every other member of this committee or the average man in the community, but the newspaper men there, if you have been listening, you will surely consider what has been going on here will not justify the taking of statements of a man 500 miles away for the purpose of forming a judgment with reference to the uprightness of the members of this committee.

(Thereupon, at 11.35 o'clock a. m., the committee adjourned, to meet at 10.30 a. m. the following day.)

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COMMITTEE ON THE JUDICIARY,  
HOUSE OF REPRESENTATIVES,  
*Saturday, December 16, 1922.*

The committee met at 10.30 o'clock a. m., Hon. Andrew J. Volstead (chairman) presiding.

The CHAIRMAN. The committee will come to order. Mr. Ralston, do you desire to be heard?

## IN RE SUBPŒNA OF HON. OSCAR E. KELLER.

Mr. RALSTON. I think, as a matter of courtesy, I should be heard for a moment.

Mr. GRAHAM. Where is Mr. Keller? He ought to be here with you if you are heard.

Mr. THOMAS. Can't he be heard at all?

Mr. GRAHAM. Pardon me, I am not addressing you.

Mr. THOMAS. It don't make any difference. I am on this committee as well as you are.

Mr. GRAHAM. I appreciate that, but do not interrupt me when I am asking a question.

Mr. THOMAS. You interrupted him.

Mr. GRAHAM. I have a right to. That is my privilege.

Mr. THOMAS. And I have a right to interrupt you.

Mr. GRAHAM. Well, do not let us have any altercation about it. I am here to do my duty as I see it.

Mr. THOMAS. So am I.

Mr. GRAHAM. Well, I give you credit for that, but you may not see clearly.

Now, I ask, is Mr. Keller here, Mr. Chairman?

The CHAIRMAN. Can you answer, Mr. Ralston?

Mr. RALSTON. I am here for Mr. Keller.

Mr. GRAHAM. That is not an answer. He ought to be here. I object to proceeding without his presence.

Mr. RALSTON. I have a statement to make for myself.

Mr. HERSEY. I want to hear Mr. Ralston.

Mr. JEFFERIS. I move that we hear Mr. Ralston.

Mr. BIRD. Mr. Chairman, I think the simple fact should be established for the record that Mr. Keller is not here. I think the sergeant at arms should call him, and if he is not here I think we should then hear Mr. Ralston.

The CHAIRMAN. My impression about it is we should first hear Mr. Ralston, and if we want to hear Mr. Keller we can call him.

Mr. BIRD. You do not object to the record showing that Mr. Keller is not here?

Mr. RALSTON. I don't care anything about that. I am here for him.

Mr. GRAHAM. I move that he be called.

Mr. BIRD. I ask that the sergeant at arms call Mr. Keller.

The CHAIRMAN. All those in favor of that motion will say "aye", opposed "no."

(The motion was put and carried. The sergeant at arms called "Oscar E. Keller," "Oscar E. Keller," "Oscar E. Keller." There was no response.)

The CHAIRMAN. It may be noted that he did not answer. Now, Mr. Ralston, you may proceed.

Mr. RALSTON. On behalf of Mr. Keller, I have simply this brief statement to make, that I have advised Mr. Keller, on his application to me that in the issuance of process requiring his appearance he being a Member of Congress with the implied threat, of course, that lies behind the process, the committee has, in my judgement, exceeded its powers under the constitutional provisions, and that being true, in defense of the rights of Members of Congress, as well as for other

reasons, Mr. Keller can not be required by any such process to appear before this committee.

The CHAIRMAN. This is a proceeding by the House itself. The subpoena was issued by the Speaker. He, Mr. Keller, is required by the action of the House to appear before this committee, which is acting for and as a part of the House. If anything is done looking toward punishment for contempt, it is not done in this committee. We simply turn it back to the House and ask the House to determine what it will do. It would seem evident that the House has a right to punish its own Members. That is a well-established principle, as I understand it.

Mr. GRAHAM. Mr. Chairman, I would like to invite the attention of my colleagues—probably they are entirely familiar with it—to the only pronouncement upon this subject that I have been able to find. It is section 1777 and section 1778 of volume 3 of Hinds' Precedents, where you will find the whole subject noted. From it I have reached a conclusion which I would like to mention, and if my colleagues concur in it our action would be based upon it.

A Congressman is entitled to two protections under the Constitution. He is entitled to protection going to and returning from the House, unless he commits treason, felony, or breach of the peace. He is entitled to protection for anything that he says in the House; that is, from being questioned for it elsewhere, but it is a monstrous proposition, to my mind, that a man who is a Member of the House can say anything or do anything without being answerable to some authority. He is answerable to the authority of the House. The House has power to investigate and compel him to make answer, particularly in a case like this.

Section 1777 refers to a matter that was heard during the Presidency of Jackson. The section says:

Members have been summoned before a committee to testify as to statements made by them in debate, but in one case a Member formally protested that it was an invasion of his constitutional privilege. The committee in its report said: "We do not consider the position assumed by Mr. Bell just or reasonable."

Then immediately after that, in 1778, another Member of Congress was summoned to appear and testify concerning a charge made in the course of debate in the House, and he came and obeyed the subpoena and testified. So that you have the uniform practice from the beginning that not in a single instance was a Member excused from testifying concerning matters which took place in the House, before the House, or one of its committee.

You are familiar with the old maxim that what one does by another he does himself. This committee is sitting representing the House, acting for the House in the investigation ordered by the House, and we have a right to summon Mr. Keller to the stand, cause him to take an oath and testify, for he has made a deliberate charge against a high official of the Government; he must have had some evidence upon which to base that charge; we have a right to make him tell us what that evidence is, the facts, give us the names of witnesses, and this investigating committee will proceed with its work until the final conclusion.

I submit to my colleagues that there is no question about the power in the manner in which we have pursued it, namely, going to the House and getting authority to subpoena witnesses, having the

subpœna issued in due form, signed by the Speaker of the House, and then finding that this man has not appeared, there is only one course, in my judgment, left for this committee, and that is to report the fact that this man has disobeyed the subpœna of the House back to the House for the House's action upon it.

Mr. JEFFERIS. You make that as a motion?

Mr. GRAHAM. I make that as a motion.

Mr. JEFFERIS. I second the motion.

Mr. BIRD. Mr. Chairman, Mr. Ralston has stated that this subpœna has violated the Constitution, but he has not stated in what regard. Now, there might be some other matter that Mr. Ralston has in mind, and I should like to ask him as to what respect he considers this subpœna is a violation of the Constitution.

Mr. RALSTON. Does the committee want a full answer on that proposition?

Mr. BIRD. Well, as a matter of law.

Mr. RALSTON. I can not answer it in a few words.

Mr. SUMNERS. For the sake of orderly procedure it would seem to me that the committee should first determine the situation that obtains and the relationship of this committee to that situation.

A subpœna has been issued for Mr. Keller. Mr. Keller has not obeyed the summons, and now notifies the committee, through his attorney, that he has not obeyed the summons, does not believe the committee has the power to summon him, and claims his privilege as a Member of Congress. Now, then, what steps is the committee going to take?

I do not know whether the committee wants to consider whether or not it has the power to attach the person of Mr. Keller and bring him before the committee. I assume the committee perhaps would not undertake to do that in the first instance.

A situation has developed in the course of this procedure under which very material changes have taken place, and the only question is, Does this committee now propose to report this situation to the House? And I assume that in the House the House would then determine the rights and the duties of the House in the premises. So far as I am personally concerned—maybe other members of the committee would like to do it—I have no objection to having the benefit of Mr. Ralston's observations for whatever benefit they may be to the House and to this committee in determining what they ought to do about it. I do not care either one way or the other about it, but there is but one question now as I see it, and that is, Shall this committee report to the House the condition in which it finds itself with reference to this investigation?

Mr. BIRD. May I ask my colleague if in his judgment the question immediately before us now is the simple and direct question as to whether or not this committee has the power to summon a Member as a witness? No questions have been asked him yet; no basis for his testimony or no suggestion as to what his testimony will be or what the questions will be has yet arisen; it is simply the naked question of whether he can be subpœnaed or not.

Mr. SUMNERS. That is the question which I assume that perhaps the committee might in the first instance determine, but it seems to me rather clear from the circumstances that an effective determination with reference to that question is in the House.

Mr. BIRD. Pardon me. My idea is that as yet but one question has come up, and that is the question of the power to summon a Member of Congress.

Mr. SUMNERS. But my point, sir—and I do not want to continue to repeat my position—is that whatever may be the attitude of this committee, its powers are challenged by Mr. Keller in a most direct sort of way, both by his refusal and by the statement which he had made to the committee through his counsel. That presents a definite situation. Mr. Keller, as a witness, has not come here, and says he will not come. Now, the situation is, will the committee report that back to the House?

Mr. CHRISTOPHERSON. Mr. Chairman, will not that be settled by the House, if it is reported to the House on Mr. Graham's motion? Is not that the question before the committee now?

Mr. MICHENER. Mr. Chairman, it strikes me this committee is now considering a given resolution. In pursuance of our authority, we call a witness to testify in reference to the things set forth in that resolution. The witness in this case, a Member of the House, refuses to come. Therefore, he might or he might not be guilty of contempt. That is merely a collateral matter growing out of the investigation. Whether we report that back to the House immediately or later is another thing; the question before us is the consideration of this resolution. The mere fact that this man is the complaining witness, of course might have a serious bearing upon what we would be able to do, because we have met here in pursuance to his request, in the beginning, to hear the proof which he says he has and which he still alleges he has, but which he, for reasons best known to himself, refuses to divulge and absents himself from further deliberations of the committee. Now, this motion made by Mr. Graham may contemplate that we go back to the House, and then come back, or it may contemplate that we go to the House in a contempt proceeding and proceed with our investigation. Now, query: Just what does the motion mean, as affecting our future action?

Mr. CHRISTOPHERSON. I understand it simply meant to report back to the House Mr. Keller's failure to proceed.

Mr. YATES. I do not feel like voting on this motion without some further information, and I agree with the gentlemen from Texas that I see no objection to hearing from Mr. Ralston his reasons in this matter. I think it would be in the interest of orderly procedure to hear it.

Mr. MICHENER. So do I.

Mr. YATES. I can see but one objection; that is, there might be another speech in the newspapers, but there are plenty of them getting in any way, and I think we ought to hear Mr. Ralston.

Mr. BOIES. I think we ought to hear Mr. Ralston, of course.

Mr. JEFFERIS. Mr. Chairman, I have not any objection to hearing from Mr. Ralston. It appears to me that the orderly proceeding in a matter of this kind is for a witness to appear here in pursuance to the summons and to testify. I recognize the constitutional provision that a Member is not to be questioned at any other place but in the House as to what he may say in debate or in a speech, but this is neither debate or speech.

Mr. GRAHAM. This is still the House.



Mr. JEFFERIS. He started an impeachment proceeding. By reason of his position in the House, he called the House to action, and the House referred it to this committee in the usual course of proceeding. Then, at a certain time, he seems to quit. Now, unless this committee is willing to go before the country as submitting to the charges that he makes against it, it is our duty, as the agents of the House, as representatives of the House, to report this transaction to the House, and if this committee is an unfair committee, or there is some other reason, the House will probably take care of that in some way. However, as far as I have seen of this committee in the few days I have been on it, it has neither acted in executive session nor anything of the kind, and everything that has occurred has been open and above board, and, as far as it has come to my knowledge, I have seen no whitewash pails around here, or anything of that kind, nor heard anything of that kind discussed except on the part of Mr. Keller, and those who seem to talk sometimes for the newspapers.

Mr. FOSTER. Mr. Chairman, may I make this observation? I have tried for two nights to read what little I could in my way concerning the precedents in this House and in the House of Commons. So far as I have been able to learn, and I think you will agree, this case is unique, for I venture the suggestion that no one of you gentlemen, no one of either party, has found a single case where a Member of the House has refused to testify and the committee has gone back to the House for contempt.

Personally I would not only like to hear from Mr. Ralston and welcome what light I can get, but I would like to further suggest that the final consideration of this motion be postponed until Monday for the purpose of enabling those of us who do not feel we have exhausted our search to be given a little more time. In the meantime we can proceed here for the purpose of getting our list of witnesses for use next week. On the question of the progress we could make in this investigation, I see nothing to be gained in acting on this motion this morning, unless all of you gentlemen are more sure than I concerning the precedents in both England and America. I would like to hear Mr. Ralston and, unless everyone is more satisfied than I, to let this matter go over until Monday so we can check up on what he may offer and further consider it. It is certainly of sufficient importance to go over 48 hours; and some of us, not as well satisfied as others, wish that additional time.

Mr. GOODYKOONTZ. Mr. Chairman, it seems to me the situation is this: A Member of the House preferred charges impeaching the Attorney General for high crimes and misdemeanors. Those charges were referred to this committee for investigation. The Member who preferred the charges gave the committee a list of certain witnesses. The witnesses have been subpoenaed and testimony taken, at the conclusion of which the Member who preferred the charges withdrew and his counsel withdrew, whereupon the committee found itself in the position of being here without the names of witnesses and without knowledge of the facts that the Member had in mind when he preferred the charges. Now, then, what are we to do? We have subpoenaed this Member as a witness. He challenges our right to bring him here to testify. He says that for him to be so required would constitute an invasion of his constitutional rights. Now, this committee sitting here has been ac- acity of investigators.

The committee have the right to summon witnesses, to examine them, and, if necessary, to cross-examine them. We are not sitting here in a judicial capacity. Whatever we report to the House is acted upon by the House, and, if the House sees fit to impeach the Attorney General, then the articles of impeachment are referred to the Senate for trial. So that we are merely investigators and not judges.

Now, then, in the present circumstances I conceive it our duty to submit a report to the House upon the facts for its consideration and action. If Mr. Keller's constitutional rights would be invaded by being compelled to come here and testify as a witness, it is a matter for the House to determine. Everything that has been said and done here has been recorded; that evidence will be printed and the whole facts made known to the House and, maybe, to the country. We do not need to consider the latter phase of the matter. So that I am in favor of acting right now by reporting the action of the committee and the attitude of Mr. Keller to the House for its consideration. If the House does not want to go on with this investigation, then we will have fulfilled our duty to the House, acting as its agent here, in attempting to perform the functions that it mandated to us.

IN RE INVITATION TO HON. ROY O. WOODRUFF, A MEMBER OF CONGRESS FROM THE STATE OF MICHIGAN, AND TO HON. ROYAL JOHNSON, A MEMBER OF CONGRESS FROM THE STATE OF SOUTH DAKOTA, TO APPEAR.

The CHAIRMAN. Let me call your attention to this situation: I have written a letter to Mr. Woodruff, of Michigan, inviting him to appear before this committee, because at one time he signified his willingness to produce testimony before the committee.

Mr. MICHENER. That is, he signified his willingness to the chairman.

The CHAIRMAN. He signified his willingness to me.

Mr. MICHENER. But not to the committee.

The CHAIRMAN. But not to the committee, and he wrote me a letter at one time stating he was willing to appear before the committee and give testimony, or produce evidence. After my letter had been delivered to him yesterday, I was called up over the phone by Mr. Woodruff—that is, I did not see him, but I assume he was the individual who was talking to me—and he told me he would not be ready to appear this morning, but would be ready to appear on Tuesday, or at the beginning of next week. I told him that that was all right, that he could then bring whatever evidence he had before the committee.

I also wrote Mr. Johnson of South Dakota a letter, as he had made some charges upon the floor of the House, if I remember it correctly.

Mr. MICHENER. Did Mr. Johnson ever say to the chairman——

The CHAIRMAN. I have not had any conversation with Mr. Johnson, either since the letter was delivered to him or before, with reference to these charges. Now, I do not think there is any great hurry about taking action without some consideration of what we had better do, and in case we do certify the matter to the House, I think we first ought to determine the form of the resolution in which we submit it. And I suggest, if there is no objection on the part of the committee,

that we take it up regularly at our next meeting and determine what to do. I do not think that a matter of this kind ought to be precipitated one way or the other. What I want to do is to get just as much testimony as we can before this committee. Of course, we are not bound by what Mr. Keller may do. Mr. Keller has made the charge openly on the floor; he says he has got the testimony, and, of course, we naturally want to get whatever he has, but he refuses to give it to us. We can not help that, perhaps, unless we go back to the House and compel action there. Now, I doubt very much, even if we should get him, whether he would give us very much of anything; being unwilling, as he has shown himself, it is doubtful whether we would profit very much if we would get him on the stand, and I think we had better consider the matter and go on.

A great many of these investigations have gone on without any attorney; most of them without anyone from the outside pushing it. The committee itself is an investigating committee for the purpose of determining these charges; it does not have to ask assistance directly from the one who made the charges, and I think we had better take it up and consider it carefully before we act, so that we may know, if we do go before the House, that we have it in proper legal form. I have been too busy to give very much consideration to the proper form.

Also, I want to say this: Mr. Keller selected this committee. It was not a committee selected especially for this matter at all. In the very resolution that he offered, he asked that this matter be referred to this committee. Of course, since then he has charged us with being a packed committee, which to my mind is a very unfair thing, because there has been no way of packing this committee. There has been only one member added to it since this matter was submitted just to fill one vacancy; that is all there has been.

Mr. JEFFERIS. Will the chairman allow me to interrupt him for a question?

The CHAIRMAN. In just a minute. In connection with that, there has been a very unfair statement published in the newspapers. Perhaps I should not pay any attention to what is published in the newspapers. It has been published that I made the statement that, from the testimony already in, I was of the opinion there was not any case here. I have made no such statement, but it has been published and republished all over the country. What I did state and which has been misrepresented was as to the evidence in reference to specification No. 4. I did not know but inadvertently I might have said something that could have been construed to mean what the press has seen fit to spread all over this country, so I went over the record very carefully to see if there was anything of that kind in the record, but there is nothing of that kind there. I made the statement that the evidence in regard to specification No. 4 was of such a character that, if they did not add something beyond what they had introduced, which was simply acts that had taken place subsequent to the impeachment, I could not see that there was much prospect of sustaining that particular specification. I called attention to a number of misstatements yesterday that have been published in reference to this committee, but I have not seen any correction of any in the newspapers. Probably it was not good copy.

Now, personally, I would suggest that the committee simply take the matter up at its next session.

Mr. DOMINICK. In regard to the charges of Mr. Woodruff and Mr. Johnson, did the chairman have in mind that this committee was going ahead and make another Graham investigation, as was done in the war fraud cases---Mr. Graham of Illinois I am speaking about?

The CHAIRMAN. No; but some of the charges that were presented by Mr. Woodruff on the floor have been put into the specifications in these impeachment charges.

Mr. FOSTER. You invited them only in connection with the specifications now before the committee?

The CHAIRMAN. That is all. I sent each a copy of the specifications and called attention to the fact that the matters they called attention to, as I remember now, were in those charges, and I invited them to bring any testimony under the various specifications that are embodied in the charges that they had to present.

IN RE SUBPŒNA OF HON. OSCAR E. KELLER.

Mr. FOSTER. Is it in order, Mr. Chairman, to propose that the vote on this motion of Mr. Graham's be postponed until Monday; would that be a proper motion in the present situation? Personally, I would like to put it over until Tuesday and, in the meantime, have time to look further into the precedents.

The CHAIRMAN. I suppose Mr. Graham's motion is subject to amendment.

Mr. FOSTER. Then I move to amend by providing that final consideration on the motion be postponed until we meet on Monday.

Mr. MICHENER. Are we going to hear Mr. Ralston?

Mr. FOSTER. Yes; I want to hear Mr. Ralston.

Mr. SUMNERS. Will the gentlemen withhold that suggestion for just a moment? Mr. Chairman, the only addition I could make to the observation made by me a moment ago is that this committee, in the first instance, might consider its own power to determine, upon its own responsibility, whether or not Mr. Keller is required to answer the subpœna of the House. In other words, as I see the situation, there are just two propositions before the House, in the present situation that the committee finds itself. First, if it wants to determine upon its own responsibility whether or not Mr. Keller is compelled to honor the subpœna which the committee has issued to him. If the committee wants to assume that responsibility and should decide that Mr. Keller does have to respond to a subpœna of the committee—if it wants to assume that responsibility—then the matter would be reported to the House as I see it.

Mr. YATES. We do not hear you, Judge. Will you speak a little louder?

Mr. SUMNERS. I will restate what I had in mind. We must conduct these proceedings in some sort of way, as I see it, and the best way is, when we come to definite situations before us, to grapple with the propositions that are presented to us as they arise. The definite proposition that confronts the committee now with reference to this matter which affects all that has preceded and affects everything that is to be done, or has to be done, is that the committee

might, upon its own responsibility, if it sees fit, enter into the question of whether or not Mr. Keller is bound to observe the subpoena that has been issued and then, if the committee should determine upon its own responsibility that he is not compelled, under the law, to observe the subpoena of the committee, that would end the matter—bearing in mind all the time, as I state, if the committee wants to assume that responsibility. Then the matter would not be reported to the House. In the absence of a willingness on the part of the committee to assume that responsibility then the only other alternative is to report this situation to the House.

Mr. DOMINICK. Do you not think a committee of lawyers ought to assume that responsibility?

Mr. SUMNERS. Just this additional observation: I am perfectly willing to put this thing off until Monday, but I can not see any possible result that can come from that. I am willing to do it however.

Mr. MICHENER. Your question contemplates action by the committee which would warrant the committee in making a recommendation to the House as to whether or not Mr. Keller can be compelled to appear. The motion simply contemplates that we report what has happened. Now your idea is that we go further and recommend to the House what the action should be?

Mr. SUMNERS. I have been unfortunate in my statement of the situation, if that is the impression I made. I say there are but two things we can do; one is to go into this question upon our own responsibility and determine the question——

Mr. MICHENER (interposing). After we have gone into it upon our own responsibility and determined the question, then what are you going to do? You would report back to the House either one way or the other?

Mr. SUMNERS. If you determine against the constitutional powers of this committee to summon Mr. Keller, that would end it, as far as Mr. Keller is concerned.

Mr. MICHENER. But you would report back to the House.

Mr. FOSTER. May I ask the gentleman a question: Are you able, this morning, from your research, to say you are ready to pass on that now, to wit, the question of whether Mr. Keller is warranted in his position this morning?

Mr. SUMNERS. To be entirely candid with you, this is my judgment about the situation——

Mr. FOSTER (interposing). The reason I am asking that, I am agreeing with the position the gentleman takes generally but I would like to have more information.

Mr. SUMNERS. If the gentleman will permit me, the situation is just this: There is no clear precedent, so far as I am able to discover—and I think there is no clear precedent—which would follow this procedure with Mr. Keller through its probable development. That is far as I want to state.

Mr. FOSTER. May I ask one further question?

Mr. SUMNERS. Wait a minute—but it is so important, with reference to the power of Congress over its Members, and the privileges of the Members, that it would seem to me that perhaps this committee was assuming more authority than the House ever intended to confer upon it, if it should assume to pass on it in such a way as to make its determination become a precedent in this country.



Mr. MICHENER. That is just it.

Mr. BOIES. May I just ask this question: Does it occur to the gentleman that the provisions of the Constitution, in protecting the Members of the House, do not apply in this case, because this committee, sitting here under the direction and order of the House, is a part of the House, and we are just as much a part of Congress as though we sat in the chamber of the House of Representatives, and that the Constitution does not apply at all. It is not taking the Member away from his duties, which is sometimes argued as one reason why he should not be subpoenaed to attend a court, but we are here now acting as Members of Congress, and in Congress. It does not matter in what particular public room we sit.

Mr. MONTAGUE. May I make this suggestion, that when the House resolves itself into a committee of the whole and some member of that committee is guilty of what is perhaps improper conduct or disorderly conduct, if you please, that committee has no authority other than to report the matter back to the House and then the House acts upon it. I simply mention that to throw such analogous light upon the matter as it may.

Mr. SUMNERS. Yes; but I think it would be rather unfortunate to enter into a discussion of the powers and duties of the committee, unless we are going to determine the question now and act on it.

Mr. BOIES. I think the only question before this committee now is as to whether we have the power to compel a Member of Congress to respond to its subpoena.

Mr. SUMNERS. I do not think the committee has the power to go that far; I think it has to get its authority from the House.

Mr. CHANDLER. Then we ought to go before the House on this resolution.

Mr. CHRISTOPHERSON. I think the only question before the committee now is whether we shall act on Mr. Graham's motion or defer it until Monday.

Mr. FOSTER. Another question I was going to ask the gentleman from Texas, while not analogous to this, is whether he has gone over the proceedings of the House in the Swayne case. If the committee intends to act this morning, I would like to hear from counsel for Mr. Keller. That is my idea. If he speaks for the newspapers, that won't hurt us. If he has some light to throw on this proposition, I would like to get it. In my humble way, I have tried, for 48 hours, to catch up with some of you gentlemen, and this is the first time, as far as I can find, that an exact question of this kind has been presented to a committee of the House, I suggest that we hear Mr. Ralston and get his views; and perhaps in 48 hours more, if we conclude to wait until Monday, some of us may be able to satisfy ourselves on this point. Then if we conclude to report it to the House, the House will get it just as quickly as it would should we act on the resolution now.

Mr. YATES. I think it is important that we hear the contentions of Mr. Keller; I do not feel fully advised in the matter until we do that.

The CHAIRMAN. I suppose it might as well go in.

Mr. MICHENER. If he has any legal proposition, I think we are entitled to it, and I think the country is entitled to it—any legal information he can give us. I think every member here has gone into the precedents and I think we are all familiar with the law, so far as

we are able to get it; but if Mr. Ralston has some other interpretation, or something new, why any court should be pleased to hear that.

Mr. YATES. Mr. Chairman, does it require a motion? If so, I make the motion that Mr. Ralston be heard.

The CHAIRMAN. Oh, it does not need a motion. Mr. Ralston has been permitted to make arguments before, and, if he has any argument to make now, we would be glad to hear it and to be referred to any authorities of any kind.

Mr. RALSTON. I think it will be understood (I have tried to make it clear, if it is not) that I did not come here to make any statement or any speech, either to the press or anybody else. I stated my position, and I sat down, and if I am to enlarge that it is being done at the request of this committee and not at any initiation or suggestion on my part.

The CHAIRMAN. We will be glad to have any legal argument on the subject.

Mr. RALSTON. I, perhaps, ought to premise—I think in justice to Mr. Keller I should—that if Mr. Keller felt, what I may very truly say he does not feel, confidence that the committee was entirely impartial, he would be here, undoubtedly, to submit himself to questions and to give any information he might have to the committee. I make that observation merely by way of introduction, and not to express an opinion or to discuss it in any shape whatever.

Mr. Keller is here subjected to the processes of this committee. Those processes can not be entered upon without being carried to their logical conclusion, bearing in mind Mr. Keller's attitude. The process served is a legal one, at least in form. It is not a request. Members of Congress have frequently appeared before committees in response to requests, or they have considered the subpoenas served upon them as the equivalent of a request, and so, perhaps, in not more than a single case has it occurred that any question has arisen. That single case was referred to a few moments ago, in the case of Mr. Bell, in, I think, 1837; and at that time he made a very vigorous, and, I think, a very sound and apt protest against the service of a subpoena upon him.

Mr. YATES. He did, however, wind up by waiving that?

Mr. RALSTON. He waived it; and probably other Members of Congress have waived it.

The CHAIRMAN. And the committees——

Mr. RALSTON (interposing). But there is no presumption, there is no inference, to be drawn in any way whatsoever from the fact of waiver, except that, in Mr. Bell's case, he felt that he was wrongfully summoned, but nevertheless he would waive that and come in.

Mr. BIRD. That never came to an adjudication in any way, did it?

Mr. RALSTON. No, sir.

Mr. MICHENER. The committee at that time, however, passed on the matter?

Mr. RALSTON. They did in the committee. The committee was of a different opinion.

Mr. MICHENER. Yes.

Mr. RALSTON. But it does not appear that there was any action by the House.

Mr. MICHENER. No.

Mr. RALSTON. So that we have here a situation which is entirely barren of precedent. And that very fact ought, I respectfully

submit, to make this committee hesitate and inquire anxiously and zealously into its power.

Now, I stated in the very beginning that I was compelled to advise Mr. Keller that, in my opinion, the committee had clearly exceeded its power in serving the subpoena, or causing it to be served upon Mr. Keller, with the threat, which must always be understood in a legal process—with the threat that back of it there were to be employed against him those usual powers which pertain to the issuance of a subpoena; in other words, there was an asseveration on the part of this committee that: "If you do not appear here, if you do not come before us, we will take such steps as are necessary to hold you for contempt."

Mr. HERSEY. Let me understand your position. Your position, as I understand it, is that this committee, acting under special power obtained from the House to summon witnesses, has that power, and can summon them lawfully, but we have not the power to compel the attendance of a witness?

Mr. RALSTON. May I just ask your indulgence until I complete my statement?

Mr. HERSEY. I just want to get your position.

Mr. RALSTON. For the benefit of the entire committee I want to state just what I have, and I will be reasonably brief, and I think I can approach it more clearly in that way.

My proposition at this time, to repeat myself, is that Mr. Keller's asseveration, Mr. Keller's rights, Mr. Keller's dependence upon his rights had to be made manifest, and must be made manifest, at the very instant of the first assertion of an attempt against him which, carried to its ultimate, means the infraction of his rights. In other words, the waiver in the beginning might very well be argued to be a waiver in the end, and we must therefore insist at the very initiation, at the very inception, of the contest, upon what we believe to be—not merely, and let this not be forgotten—not merely the individual and present-day rights of Mr. Keller; he may be an individual of more or less importance; but the individual and the permanent rights of all Members of Congress, for now and for all future time. Because the assertion is practically made that before a committee of Congress everything that comes to that Congressman, in any shape, in the public interest, must be revealed to the public eye, whatever reason for secrecy might, with all propriety, exist.

For the moment, however, the discussion of that branch of the question is not so immediately important.

I refer the committee to a document with which they are all undoubtedly more intimately familiar than I possibly could be, and that is the Constitution of the United States.

And the first provision to which I want to call your attention, because it interlocks with other provisions, the first provision, as the committee knows well, is that—

Senators and Representatives shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the sessions of their respective House.

"Privileged from arrest." Is there a qualification upon that? Does it say "privileged from arrest in any court or in any proceeding, except it be initiated by the House of Representatives or the Senate"?

There is no such qualification; it does not exist. The right of privilege from arrest is a complete and absolute privilege, except in two cases, to which I shall refer in a moment—aside, I mean, from treason, felony, and breach of the peace.

There is no more reason why—except there be another constitutional provision, to which I shall refer—there is no more reason why the House of Representatives should have the power to arrest one of its Members for a reason not given, for a purpose not allowed to it by the Constitution of the United States, than that the courts should arrest a Member of Congress; and the essential trouble at the bottom of it is precisely the same.

Why—why did the constitutional convention put into the Constitution that provision prohibiting arrest from everybody—and that means the Congress itself—from everybody, except for three certain important offenses?

It did it because you gentlemen coming here, and others in Congress, were entitled to come here without fear, and to leave here without molestation, during the sessions of Congress. And if 100 Members of Congress can, at their will, good or bad, as you please, imprison one of their number, they, to that extent, have invaded his rights as a Representative, except it be that there can be shown to be a clear constitutional mandate allowing them to take away, by arrest, the freedom of action of the Representative of that particular Minnesota district represented by Mr. Keller.

Your action is as fatal—if Mr. Keller is to be ultimately arrested—is as fatal to the rights of those citizens in Minnesota as if he had been arrested by a court itself. And I can not for a moment think that you gentlemen or Congress will, except a clear mandate be shown, interfere with the rights of the people of a district in Minnesota to be represented here.

Now, I said that there were certain reasons for arrest which, constitutionally, were allowed, aside from treason, felony, and breach of the peace.

Those reasons are two. And when I enumerate those reasons, I am going to submit to you, Mr. Chairman, that I have enumerated, bounded, and described the entire powers of the House of Representatives in a matter of this sort.

The Constitution tells for what particular reasons, pertaining to the administration of the duties of the House of Representatives or the Senate—the Constitution tells you, in so many words, for what reasons you may cause a Member of Congress to be arrested. And there is the boundary and the limit of your jurisdiction.

What are they?

A smaller number than a quorum of either House can adjourn from day to day and may be authorized to compel the attendance of absent Members in such manner and under such penalties as each House may provide.

Now, there you have got the consideration of a penalty: you have got, if you please, a power of enforcement put on Members of Congress; you have got a right to fix your penalties. Beyond that you may not go.

Now, one other thing:

Each House may determine the rules of its proceedings, punish its Members for disorderly behavior, and, with the concurrence of two-thirds, expel a Member.

There we come to the second limitation—at least, the second power which carries with it a limitation on the House of Representatives or the Senate. You may, by whatever penalties you please, enforce the presence of absent Members. You may, by such penalties as the House considers appropriate, punish the Members for disorderly conduct. And there you stop.

Now, gentlemen of the committee, is it for a minute to be assumed that, under such circumstances, another power, a third power, to imprison for contempt may be imported into the Constitution?

I shall respectfully submit not; and the instant that you employ the Congress of the United States in being its own accuser and executioner, that minute you go beyond the clear powers of the House.

You may say that there were the usual provisions of parliamentary law; you have your limitations as to them. And, as has been said, and as is true, so far as my very hasty examination shows, no parliamentary body in existence—certainly, at the time of the adoption of the Constitution of the United States, no parliamentary body was able, or ever claimed or exercised the right of punishing one of its own members, or holding over him a threat of imprisonment, if he did not do the thing, because of any failure to appear and testify.

You are proposing, therefore, to do something which has no authority in the Constitution of the United States; for the Constitution contains express limitations. You are proposing to do something for which you have no right, under any parliamentary law to which you can possibly cite me—and something that is proposed to be done off-hand, and practically without consideration; and to, as I say, forge a precedent threatening to Members of Congress for all future time.

Mr. HERSEY. Now, Mr. Ralston, if you will answer a question or two, I will thank you very much.

Mr. RALSTON. Yes; if I can.

Mr. HERSEY. These impeachment proceedings were commenced in the House by Mr. Keller rising on the floor of the House, impeaching a cabinet officer of high crimes and misdemeanors. He accompanied his impeachment with a resolution asking the House to pass this resolution which referred the matter to this committee to hear and report to the House. The House thereupon referred the charges under the resolution to this committee for investigation. The committee, sitting as a committee of the House, a regular committee of the House, to whom Mr. Keller had his resolution referred, had no knowledge of any facts, except in three directions: One, by the assertions of Mr. Keller upon the floor of the House; two, by certain statements made by Representative Johnson upon the floor of the House—not impeachments; and, third, by certain representations made by Mr. Woodruff, a Member of the House, upon the floor of the House in debate.

Outside of those three witnesses, the committee has never had any knowledge of anyone to whom it could go for information; but it had the right to suppose that those three Members of the House—two speaking in debate in the House, and one under the solemn impeachment of a high official—would certainly appear before the committee, when organized, to give information in support of those charges.



The committee organized and called upon Mr. Keller to produce the evidence which he asserted in a solemn manner upon the floor of the House, that he had, to impeach the Attorney General, to prove his charges, of which we were ignorant of any proof.

He attempts to do so by producing certain men that he claims are witnesses to prove certain of those charges—I think largely, 13 and 4—with a statement on his part to his counsel—yourself—that when we had examined 13 and 4, at his request, we were to go to 7, and then to the rest.

Mr. MONTAGUE. As requested by himself.

Mr. HERSEY. As requested by himself; yes. The Attorney General appeared by counsel and said that the committee should, at his request, hear all the evidence which was produced, no matter whether, in the opinion of the committee, it was relevant or no matter whether, in the opinion of the committee, it was admissible or not. The committee thereupon threw wide open the doors to any evidence that might be produced before this committee by Mr. Keller, his counsel, or anybody else.

When we proceeded to a certain point in the matter, Mr. Keller announced to the committee that he would present no further evidence; he refused to proceed any further before the committee; also his counsel then withdrew from the case.

The committee thereupon asked if anybody appeared to present any further charges or any further evidence, and nobody appeared.

The committee thereupon issued a subpoena, which we believed we had the right to do, under the authority given by the House——

Mr. FOSTER (interposing). Pardon me there—which we could not have issued, except that on the request and demand of Mr. Keller, we went back to the House and got the authority to issue it.

Mr. HERSEY. Certainly; we got authority for it at his request. And among those that we knew or supposed had some information to give the committee under their executive powers, we supposed that Mr. Keller would back up the charges that he made on his own responsibility, and that we might, in the course of our investigation, have before us two other Members of Congress who have made charges, Mr. Woodruff and Mr. Johnson.

Now, if your position is correct, Mr. Keller can make these solemn charges upon the floor of the House, and upon his motion have them referred to our committee, and then refuse to furnish any evidence whatever, or even testify himself.

Further, if that is true, we can not summon and force to testify two other Members of the House who have made charges—and the only charges we know anything about—to wit, Mr. Johnson and Mr. Woodruff.

And therefore the Congress of the United States, and especially the House of Representatives, are impotent to investigate charges made by a Member upon the floor of the House—or in debate—in solemn impeachment against even the President of the United States, and to call upon the Members who made those charges to produce the proof of them; and our only remedy—as well as that of the Senate—would be to expel the Member who would so act in the House of Representatives. Is that your position?

Mr. RALSTON. No; you ask me if that is my position. I say “no,” because I would differ with you in so very many particulars of

his statement that I could not answer a question of that kind in any such way. Now, if I may refer to it, three-fourths——

The CHAIRMAN. But, assuming that statement of fact he was making was true?

Mr. RALSTON. I could not make that assumption.

The CHAIRMAN. If it does not apply in this case, what would be the difference?

Mr. RALSTON. Three-fourths of what Mr. Hersey has said has been a defense of the action of the committee. About that I have refrained from saying anything at all times, either here or in the press.

Mr. CHANDLER. Let me put it on a very simple basis. I think, if I understand my colleague's question, that I might put it this way: You admit the House has the right to compel the attendance of Members in the performance of their duties?

Mr. RALSTON. Yes.

Mr. CHANDLER. And to punish them for failure to attend?

Mr. RALSTON. Yes.

Mr. BOIES. Do you think Mr. Ralston's opinion on this point will be helpful to the committee, Mr. Chandler?

Mr. CHANDLER. I want to finish my question; I will be the judge of that, if you please. I say, then, you admit they have the right to compel the attendance of Members?

Mr. RALSTON. Yes.

Mr. CHANDLER. And to punish them for contempt for failure to attend and perform the ordinary duties of Members of Congress. Now, I suppose you will also admit he is not acting as a private citizen but as a Congressman in rising in the House and making a preferment of charges against a high Government official for high crimes and misdemeanors, and that he is then exercising the right of a Congressman, and performing his duty as a Congressman, and the House has a right, then, to compel him to carry out those duties, which he has voluntarily assumed, and to force him to tell to his colleagues what he says he can tell and to force him to furnish the evidence.

Mr. RALSTON. No.

Mr. CHANDLER. What is the difference in the two cases?

Mr. RALSTON. I think there is a very decided difference. There may arise a point, a time, when, in the opinion of the Congressman, his duty to proceed along a given line of action has ended. That time Mr. Keller reached and he ceased to perform, as he started out to do, his duty, because he felt that that duty could not be performed in that way.

Mr. GOODYKOONTZ. In other words, Keller pretends that this is a hostile committee and, to indicate his feeling of such alleged hostility, he comes before us with a written document setting forth his criticisms. Now, Mr. Ralston, this committee being an arm or an agency of the House of Representatives, if Keller's charge be unfounded, would he not then be in contempt of the House?

Mr. RALSTON. No, I never heard of any man being in contempt of court because he filed some charge which was not sustained.

Mr. HICKEY. Mr. Chairman, what is the use of continuing this proceeding?

Mr. GOODYKOONTZ. The House has the power to reprimand, to censure, and even to expel. That, of course, is all based on the provision of the Constitution which you have read, which says that each

House may punish Members for disorderly conduct and misbehavior, and, with the consent of two-thirds, expel, etc. Now, under that provision, Members have been censured for personalities and disorder in debate, or for presenting a resolution alleged to be insulting to the House. Therefore, if the document that Mr. Keller filed here be an open challenge of the integrity of the committee, do you not believe that the House has plenary power to deal with him by censure, by reprimand or, if need be, by expulsion?

Mr. RALSTON. To begin with, I would like to ask if the document which Mr. Keller presented here has been filed and will be published as a part of these proceedings?

Mr. GOODYKOONTZ. It has been published in the papers already.

Mr. RALSTON. I do not know whether it has been made a part of the proceedings or not.

Mr. FOSTER. I think he is entitled to an answer. It has not.

Mr. RALSTON. Mr. Goodykoontz's answer is not responsive that it has been published in the newspapers.

Mr. GOODYKOONTZ. He was very busy handing out copies to the different members of the press, after he left the room, so the newspaper men said.

Mr. FOSTER. I would like to ask you a question: The fact that this condition exists by virtue of a resolution offered by Mr. Keller and the further fact that the subpoena which he refuses to answer could only have been issued under the authority requested by him, those facts, in your mind, would not in any way change your legal contention that he has a right to drop out at any time he wants to?

Mr. RALSTON. He has the right to drop out, yes; but I can not concede anything, based upon Mr. Goodykoontz's proposition, even hypothetically, until the document in question becomes a part of the record of this committee officially; and, after that, the question will be met when it is necessary.

Mr. HICKEY. Mr. Chairman, there is a motion before the committee, and I move that we either pass upon that motion at this time or else delay action until Monday.

The CHAIRMAN. The motion will be in order first, I suppose. Those who are in favor of the motion——

Mr. MICHENER. What is the motion?

Mr. HERSEY. There is an amendment to the motion to postpone until Monday. That is the first in order.

The CHAIRMAN. Yes. We will first act on the amendment to the motion to postpone action until Monday at 10.30 o'clock a. m. Those in favor will say aye.

(Cries of "aye.")

The CHAIRMAN. Those opposed will signify by saying "no."

(Cries of "no.")

The CHAIRMAN. In the opinion of the Chair, the "ayes" have it, and the motion is carried.

Mr. RALSTON. May I understand that I am excused, then, Mr. Chairman?

Mr. FOSTER. Now, Mr. Chairman, in view of your communication with these two other Congressmen, is there anything we can take up on that to-day?

Mr. HICKEY. What shall we do with Mr. Richberg here? He has been subpoenaed, and he is here, and we asked him to stay until this morning.

Mr. MICHENER. Mr. Ralston, in order that there may be no misunderstanding here, you appear to-day for Mr. Keller?

Mr. RALSTON. Yes, sir.

Mr. MICHENER. Now, in this one particular, do you expect to be here when the committee meets on Monday?

Mr. RALSTON. I assumed, in asking to be excused, that I would not be here.

Mr. MICHENER. I wanted it clearly understood, if we did meet and took action and you should not be present, that it could not be claimed that we had taken action when you were not here.

Mr. RALSTON. I asked the express question if I was excused.

Mr. HICKEY. You had Mr. Richberg subpoenaed. Do you desire him to remain any longer?

Mr. RALSTON. I am out of the case from night before last.

#### IN RE THE MACAULEY PAPERS.

The CHAIRMAN. Mr. Howland, have you the Macauley papers here?

Mr. HOWLAND. I believe so, sir.

The CHAIRMAN. I believe the arrangement was made, Mr. Ralston, you would point out which ones you wanted put in. There is a whole newspaper there, as I understand, which contains a lot of irrelevant matter.

Mr. RALSTON. That irrelevant matter is not one of the things I insisted on when I was in the case.

The CHAIRMAN. That is one of the reasons I thought it ought to be excluded, because it is a well-known rule that if you offer a lot of irrelevant matter, as a part of relevant matter, it makes it all inadmissible.

Mr. BOIES. He said there were advertisements on the back of the newspapers.

Mr. RALSTON. The advertisements, of course, are meaningless.

Mr. MICHENER. Mr. Vahey, at the hearing yesterday, intimated that you would indicate the parts you wanted to go in, and the matter was held open upon that statement of Mr. Vahey, who said he was associated with you.

Mr. VAHEY. There was some inquiry as to whether the advertisements that were annexed——

Mr. HERSEY. That can be done without doing it while we are in session.

Mr. VAHEY. Yes.

The CHAIRMAN. We do not want you to claim we have tried to exclude things that have any relevancy.

Mr. HERSEY. I move you, Mr. Chairman, that you as the chairman of this committee, notify those present and have a public notice given here, that the committee will, on Monday, proceed to hear any other evidence offered to sustain these charges, if there is any.

The CHAIRMAN. I thought possibly there would not be any hearing on Monday; that the hearing should commence on Tuesday. That has been the understanding.

Mr. HERSEY. We adjourned until Monday.

The CHAIRMAN. We adjourned until Monday; but we won't hold any hearing, because we will have this other matter to go over.

Mr. HERSEY. Then, I move you that we meet on Tuesday to hear evidence on any of these charges that may be offered.

The CHAIRMAN. I shall call the committee together for that purpose anyhow.

RE SUBPENA OF MR. DONALD R. RICHBERG, ATTORNEY AT LAW,  
CHICAGO, ILL.

Mr. HICKEY. Now, Mr. Chairman, at the request of the committee, Mr. Richberg has stayed over until to-day. I believe we should advise him whether or not it is the desire of the committee to have him remain longer?

Mr. FOSTER. May I suggest that we excuse him subject to the call of the committee? He said he was willing to do that.

Mr. MONTAGUE. Mr. Richberg made the statement to the committee yesterday that the only proof that he desired to submit to the committee, as I understood, was certain court documents and certain court records.

Mr. FOSTER. He says he does not even desire to submit that, but said that was all he was asked by Mr. Keller to submit.

Mr. MONTAGUE. Yes. Therefore, I submit if they are court records he can leave them and we will discharge our duty when we consider them.

Mr. HERSEY. Are these papers on file in the Department of Justice?

Mr. RICHBERG. All of them; yes. I would like to say it is not a desire of mine to submit any records and simply stated that which I had given to Mr. Ralston was in response to his request. Those facts were contained in these documents which are all available to the committee. Those documents are entirely self-explanatory and the facts are all contained therein.

Mr. FOSTER. You have no desire to submit them?

Mr. RICHBERG. I have no desire, voluntarily, to submit any testimony.

Mr. FOSTER. You do not desire to be put in the position of being a prosecutor?

Mr. RICHBERG. Not in any way.

Mr. FOSTER. I move that Mr. Richberg be excused.

The CHAIRMAN. With the understanding that he will come if we telegraph for him.

Mr. RICHBERG. I will respond to any telegraphic summons of the committee that it is within my physical power to respond to.

Mr. JEFFERIS. Has anything been heard from Mr. Untermeyer?

The CHAIRMAN. Nothing. There has been no communication here from Mr. Untermeyer.

Mr. GOODYKOONTZ. Mr. Untermeyer communicates through the newspapers and at long distance.

The CHAIRMAN. Mr. Richberg, then, may be excused, subject to that understanding that he will come whenever we ask him, and when you do come, bring those records back so that they can be used.

Mr. RICHBERG. I will bring with me anything the committee desires.

Mr. HOWLAND. Mr. Chairman, for the Attorney General, it will not be necessary for us to be here until Tuesday; is that the understanding?



## COMMITTEE PROCEEDS WITH INVESTIGATION.

The CHAIRMAN. I did not intend to call the hearing for earlier than Tuesday, because I did not think there was any chance of getting any witnesses. We will meet on Monday and consider this matter, with a view to determining what action we should take with reference to Mr. Keller's attitude and conduct.

Mr. FOSTER. It is the understanding, then, we will start on Tuesday with taking further testimony?

The CHAIRMAN. If there is any way of getting witnesses. Of course, you realize this: We have depended on Mr. Keller to give us the testimony. As a consequence, we have made no effort to find other sources of evidence. It may take us some time to get on our feet to make a proper investigation.

Mr. FOSTER. It might be, in the meantime, that Mr. Woodruff and Mr. Johnson could give the chairman the names of some witnesses.

The CHAIRMAN. That is what I hope. I shall see them and see if I can find out what witnesses they have and see if anybody else has any witnesses. It has been customary for the committee to go on and make its own investigations.

The committee stands adjourned until Monday at 10.30 o'clock a. m.

(Thereupon, at 11.50 o'clock a. m., the committee adjourned until Monday, December 18, 1922, at 10.30 o'clock a. m.)

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COMMITTEE ON THE JUDICIARY,  
HOUSE OF REPRESENTATIVES,  
*Tuesday, December 19, 1922.*

The committee met at 10.30 o'clock a. m., Hon. Andrew J. Volstead (chairman) presiding.

The CHAIRMAN. Mr. Woodruff, I believe you said that you desired to be heard, or had some testimony that you wanted to offer?

Mr. FOSTER. I could not hear the chairman, please?

The CHAIRMAN. I was addressing Mr. Woodruff.

Mr. FOSTER. I beg your pardon.

Mr. WOODRUFF. I could not hear the chairman.

The CHAIRMAN. I believe you said you had some testimony you want to offer, or some witnesses?

**STATEMENT OF HON. ROY O. WOODRUFF, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN.**

Mr. WOODRUFF. Mr. Chairman, I would like to preface my remarks, if the Chair will permit, by reading the letter that the Chair wrote me on December 15.

The CHAIRMAN. The committee is familiar with that.

Mr. WOODRUFF. I would like to have it in the record, and I will state my reasons for that: That the newspapers of the country have carried stories which would indicate that the committee had summoned me and put me under subpoena; and I will read it simply for the purpose of setting that matter right.

The CHAIRMAN. No subpoena was issued.

Mr. HERSEY. ~~diff.~~ ~~No~~: I so understand it, and the committee so  
evidence on an ~~but~~ I would like to make it part of the record, if the  
The CHAIRMAN ~~object.~~  
pose anyhow. I move that it be made a part of the record without

RE SUBPŒNA. It may be made a part of the record without  
referred to is as follows:)

HOUSE OF REPRESENTATIVES OF THE UNITED STATES,  
COMMITTEE ON THE JUDICIARY,  
Washington, D. C., December 15, 1922.

WOODRUFF,  
of Representatives.

WOODRUFF: Inclosed find copy of the charges made by Hon. Oscar E.  
th day of September, 1922, in the House of Representatives, against  
Daugherty, Attorney General of the United States, together with the  
d by Mr. Keller in amplification of his charges, and the answer of  
Daugherty to such charges.

been in progress for some time before the Committee on the Judiciary  
As you at one time called my attention to the fact that you desired  
me of these charges, I would respectfully suggest that you appear  
ittee on the Judiciary at its committee room in the House Office  
ity at 10.30 o'clock a. m. on the 16th of December, 1922, so arrange-  
e to have whatever testimony you desire to present furnished to the  
committee will greatly appreciate any assistance you can give  
thorough investigation of any of the charges.  
ours,

A. J. VOLSTEAD,  
Chairman Judiciary Committee.

Mr. Chairman, in view of that letter, I do not know  
Keller's letter. I move that it be made part of the  
never seen it, and I do not know what it is.

x. My position in reference to has been that unless a  
e evidential value we do not publish it in the record.  
of letters here; we seldom publish any of them; and  
e that the committee should determine off-hand  
d be put in the record until it sees what it contains.  
I am not objecting to that; but if one letter goes in—  
Maine magistrate—I want them all in.

r. Chairman, in view of the statement of Mr.  
a order to clear the record, as the committee  
no subpoena was issued for Mr. Woodruff, why can  
take the letter and pass on it later, and perhaps  
r. Woodruff; is that right, Mr. Woodruff?

The letter that he is referring to, I suppose, is a  
ler sent the committee?

No; the letter that I referred to is the very  
it you wrote me on December 15, Mr. Chairman.  
want to show that you were not subpoenaed?

Yes; in which the chairman very courteously  
me here and assist this committee in this in-

ink that is proper.

And I want to state for the benefit of the chairman  
the committee that I appreciate the courtesy of  
much.

that letter been made part of the record?

he letter suggested that I appear here on Decem-  
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received the letter. Inasmuch as I had a number of appointments for that morning—and one of them with the President, by the way—it was inconvenient for me to appear at that time, and I called the chairman of the committee on the telephone and asked if it would be all right with the committee if I would appear at a later day; he very courteously assured me that it would.

Now, Mr. Chairman and gentlemen of the committee, I want to state now that I had nothing whatever to do with the preferment of these charges of impeachment. I knew nothing about it until after it had been done; I had nothing whatever to do with the preparation of the bill of particulars; I did not see that bill of particulars until after it had been submitted to the public; I assume no responsibility whatever for anything that may appear in that bill of particulars.

As regard the specifications 1 to 13, I know practically nothing and can give the committee very little, if any, assistance on those specifications. I do have some information about one of the subdivisions of specification 14, and I am prepared to assist the committee in determining the merits of those particular subdivisions.

Mr. FOSTER. That is 14, as I understand, Mr. Woodruff?

Mr. WOODRUFF. Yes. I have neglected to bring with me a copy of the charges and specifications.

The CHAIRMAN. The committee will furnish you a copy. [A copy was furnished to Mr. Woodruff.]

Mr. CHRISTOPHERSON. That is subdivision 13?

Mr. WOODRUFF. Subdivision 14.

Mr. BIRD. You mean specification No. 14?

Mr. WOODRUFF. Yes, specification No. 14.

Mr. BOIES. Subdivision No. 1, on page No. 73, of serial No. 41?

The CHAIRMAN. It is page 61 of the committee print of the charges.

Mr. BIRD. It is page 73 of the hearing.

Mr. WOODRUFF. In regard to subdivision No. 1, Mr. Chairman, all the information I have upon that particular subdivision is indicated in a letter written to me by a man by the name of Greenberg, of Chicago. I assume no responsibility for anything contained in that letter; but for the information of the committee, if the committee so desires, I will read the letter into the record; the committee can then take such action——

Mr. HERSEY (interposing). Who is Greenberg?

Mr. WOODRUFF. He is a business man of Chicago, I understand. I am assuming no responsibility for it.

Mr. HERSEY. Do you know what his address is?

The CHAIRMAN. I think the letter ought to be submitted to the committee, so that it may determine whether there is anything in it that will justify investigation. The letter itself would not be evidence.

Mr. WOODRUFF. I will say this, Mr. Chairman——

Mr. DOMINICK (interposing). Mr. Chairman, may I interrupt and ask where we are heading to in this matter? Is Mr. Woodruff here as an attorney or as a witness?

Mr. WOODRUFF. I am not here as a witness—I will correct the gentleman. But I am here and not represented by an attorney——

Mr. DOMINICK (interposing). I understand that it is the custom here, and the understanding of the committee, that we wanted this hearing to be held under oath.

Mr. WOODRUFF. No; I so understand it, and the committee so understands it, but I would like to make it part of the record, if the Chair does not object.

Mr. HERSEY. I move that it be made a part of the record without reading it.

The CHAIRMAN. It may be made a part of the record without reading it.

(The letter referred to is as follows:)

HOUSE OF REPRESENTATIVES OF THE UNITED STATES,  
COMMITTEE ON THE JUDICIARY,  
Washington, D. C., December 15, 1922.

Hon. ROY O. WOODRUFF,  
*House of Representatives.*

DEAR MR. WOODRUFF: Inclosed find copy of the charges made by Hon. Oscar E. Keller on the 11th day of September, 1922, in the House of Representatives, against Hon. Harry M. Daugherty, Attorney General of the United States, together with the specifications filed by Mr. Keller in amplification of his charges, and the answer of Attorney General Daugherty to such charges.

Hearings have been in progress for some time before the Committee on the Judiciary on these charges. As you at one time called my attention to the fact that you desired to be heard on some of these charges, I would respectfully suggest that you appear before the Committee on the Judiciary at its committee room in the House Office Building in this city at 10.30 o'clock a. m. on the 16th of December, 1922, so arrangements can be made to have whatever testimony you desire to present furnished to the committee. The committee will greatly appreciate any assistance you can give looking toward a thorough investigation of any of the charges.

Very truly yours,

A. J. VOLSTEAD,  
*Chairman Judiciary Committee.*

Mr. THOMAS. Mr. Chairman, in view of that letter, I do not know what was in Mr. Keller's letter. I move that it be made part of the record. I have never seen it, and I do not know what it is.

The CHAIRMAN. My position in reference to has been that unless a letter has some evidential value we do not publish it in the record. We get all sorts of letters here; we seldom publish any of them; and I do not believe that the committee should determine off-hand whether it should be put in the record until it sees what it contains.

Mr. THOMAS. I am not objecting to that; but if one letter goes in—I am like the old Maine magistrate—I want them all in.

Mr. FOSTER. Mr. Chairman, in view of the statement of Mr. Woodruff, and in order to clear the record, as the committee understands that no subpoena was issued for Mr. Woodruff, why can the committee not take the letter and pass on it later, and perhaps that will satisfy Mr. Woodruff; is that right, Mr. Woodruff?

The CHAIRMAN. The letter that he is referring to, I suppose, is a letter that Mr. Keller sent the committee?

Mr. WOODRUFF. No; the letter that I referred to is the very courteous letter that you wrote me on December 15, Mr. Chairman.

Mr. YATES. You want to show that you were not subpoenaed?

Mr. WOODRUFF. Yes; in which the chairman very courteously suggested that I come here and assist this committee in this investigation.

Mr. HERSEY. I think that is proper.

Mr. WOODRUFF. And I want to state for the benefit of the chairman and the members of the committee that I appreciate the courtesy of the chairman very much.

Mr. HERSEY. Has that letter been made part of the record?

Mr. WOODRUFF. The letter suggested that I appear here on December 16. That was the morning following the evening upon which I

received the letter. Inasmuch as I had a number of appointments for that morning—and one of them with the President, by the way—it was inconvenient for me to appear at that time, and I called the chairman of the committee on the telephone and asked if it would be all right with the committee if I would appear at a later day; he very courteously assured me that it would.

Now, Mr. Chairman and gentlemen of the committee, I want to state now that I had nothing whatever to do with the preferment of these charges of impeachment. I knew nothing about it until after it had been done; I had nothing whatever to do with the preparation of the bill of particulars; I did not see that bill of particulars until after it had been submitted to the public; I assume no responsibility whatever for anything that may appear in that bill of particulars.

As regard the specifications 1 to 13, I know practically nothing and can give the committee very little, if any, assistance on those specifications. I do have some information about one of the subdivisions of specification 14, and I am prepared to assist the committee in determining the merits of those particular subdivisions.

Mr. FOSTER. That is 14, as I understand, Mr. Woodruff?

Mr. WOODRUFF. Yes. I have neglected to bring with me a copy of the charges and specifications.

The CHAIRMAN. The committee will furnish you a copy. [A copy was furnished to Mr. Woodruff.]

Mr. CHRISTOPHERSON. That is subdivision 13?

Mr. WOODRUFF. Subdivision 14.

Mr. BIRD. You mean specification No. 14?

Mr. WOODRUFF. Yes, specification No. 14.

Mr. BOIES. Subdivision No. 1, on page No. 73, of serial No. 41?

The CHAIRMAN. It is page 61 of the committee print of the charges.

Mr. BIRD. It is page 73 of the hearing.

Mr. WOODRUFF. In regard to subdivision No. 1, Mr. Chairman, all the information I have upon that particular subdivision is indicated in a letter written to me by a man by the name of Greenberg, of Chicago. I assume no responsibility for anything contained in that letter; but for the information of the committee, if the committee so desires, I will read the letter into the record; the committee can then take such action——

Mr. HERSEY (interposing). Who is Greenberg?

Mr. WOODRUFF. He is a business man of Chicago, I understand. I am assuming no responsibility for it.

Mr. HERSEY. Do you know what his address is?

The CHAIRMAN. I think the letter ought to be submitted to the committee, so that it may determine whether there is anything in it that will justify investigation. The letter itself would not be evidence.

Mr. WOODRUFF. I will say this, Mr. Chairman——

Mr. DOMINICK (interposing). Mr. Chairman, may I interrupt and ask where we are heading to in this matter? Is Mr. Woodruff here as an attorney or as a witness?

Mr. WOODRUFF. I am not here as a witness—I will correct the gentleman. But I am here and not represented by an attorney——

Mr. DOMINICK (interposing). I understand that it is the custom here, and the understanding of the committee, that we wanted this hearing to be held under oath.



Mr. WOODRUFF. No; I so understand it, and the committee so understands it, but I would like to make it part of the record, if the Chair does not object.

Mr. HERSEY. I move that it be made a part of the record without reading it.

The CHAIRMAN. It may be made a part of the record without reading it.

(The letter referred to is as follows:)

HOUSE OF REPRESENTATIVES OF THE UNITED STATES,  
COMMITTEE ON THE JUDICIARY,  
Washington, D. C., December 15, 1922.

Hon. ROY O. WOODRUFF,  
*House of Representatives.*

DEAR MR. WOODRUFF: Inclosed find copy of the charges made by Hon. Oscar E. Keller on the 11th day of September, 1922, in the House of Representatives, against Hon. Harry M. Daugherty, Attorney General of the United States, together with the specifications filed by Mr. Keller in amplification of his charges, and the answer of Attorney General Daugherty to such charges.

Hearings have been in progress for some time before the Committee on the Judiciary on these charges. As you at one time called my attention to the fact that you desired to be heard on some of these charges, I would respectfully suggest that you appear before the Committee on the Judiciary at its committee room in the House Office Building in this city at 10.30 o'clock a. m. on the 16th of December, 1922, so arrangements can be made to have whatever testimony you desire to present furnished to the committee. The committee will greatly appreciate any assistance you can give looking toward a thorough investigation of any of the charges.

Very truly yours,

A. J. VOLSTEAD,  
*Chairman Judiciary Committee.*

Mr. THOMAS. Mr. Chairman, in view of that letter, I do not know what was in Mr. Keller's letter. I move that it be made part of the record. I have never seen it, and I do not know what it is.

The CHAIRMAN. My position in reference to has been that unless a letter has some evidential value we do not publish it in the record. We get all sorts of letters here; we seldom publish any of them; and I do not believe that the committee should determine off-hand whether it should be put in the record until it sees what it contains.

Mr. THOMAS. I am not objecting to that; but if one letter goes in—I am like the old Maine magistrate—I want them all in.

Mr. FOSTER. Mr. Chairman, in view of the statement of Mr. Woodruff, and in order to clear the record, as the committee understands that no subpoena was issued for Mr. Woodruff, why can the committee not take the letter and pass on it later, and perhaps that will satisfy Mr. Woodruff; is that right, Mr. Woodruff?

The CHAIRMAN. The letter that he is referring to, I suppose, is a letter that Mr. Keller sent the committee?

Mr. WOODRUFF. No; the letter that I referred to is the very courteous letter that you wrote me on December 15, Mr. Chairman.

Mr. YATES. You want to show that you were not subpoenaed?

Mr. WOODRUFF. Yes; in which the chairman very courteously suggested that I come here and assist this committee in this investigation.

Mr. HERSEY. I think that is proper.

Mr. WOODRUFF. And I want to state for the benefit of the chairman and the members of the committee that I appreciate the courtesy of the chairman very much.

Mr. HERSEY. Has that letter been made part of the record?

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received the letter. Inasmuch as I had a number of appointments for that morning—and one of them with the President, by the way—it was inconvenient for me to appear at that time, and I called the chairman of the committee on the telephone and asked if it would be all right with the committee if I would appear at a later day; he very courteously assured me that it would.

Now, Mr. Chairman and gentlemen of the committee, I want to state now that I had nothing whatever to do with the preferment of these charges of impeachment. I knew nothing about it until after it had been done; I had nothing whatever to do with the preparation of the bill of particulars; I did not see that bill of particulars until after it had been submitted to the public; I assume no responsibility whatever for anything that may appear in that bill of particulars.

As regard the specifications 1 to 13, I know practically nothing and can give the committee very little, if any, assistance on those specifications. I do have some information about one of the subdivisions of specification 14, and I am prepared to assist the committee in determining the merits of those particular subdivisions.

Mr. FOSTER. That is 14, as I understand, Mr. Woodruff?

Mr. WOODRUFF. Yes. I have neglected to bring with me a copy of the charges and specifications.

The CHAIRMAN. The committee will furnish you a copy. [A copy was furnished to Mr. Woodruff.]

Mr. CHRISTOPHERSON. That is subdivision 13?

Mr. WOODRUFF. Subdivision 14.

Mr. BIRD. You mean specification No. 14?

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Mr. HERSEY (interposing). Who is Greenberg?

Mr. WOODRUFF. He is a business man of Chicago, I understand. I am assuming no responsibility for it.

Mr. HERSEY. Do you know what his address is?

The CHAIRMAN. I think the letter ought to be submitted to the committee, so that it may determine whether there is anything in it that will justify investigation. The letter itself would not be evidence.

Mr. WOODRUFF. I will say this, Mr. Chairman——

Mr. DOMINICK (interposing). Mr. Chairman, may I interrupt and ask where we are heading to in this matter? Is Mr. Woodruff here as an attorney or as a witness?

Mr. WOODRUFF. I am not here as a witness—I will correct the gentleman. But I am here and not represented by an attorney——

Mr. DOMINICK (interposing). I understand that it is the custom here, and the understanding of the committee, that we wanted this hearing to be held under oath.

The CHAIRMAN. My understanding is that he is not furnishing any testimony; he is just making a general statement now to explain his position.

Mr. WOODRUFF. I am just making a general statement, I will say, for the benefit of the chairman and for the benefit of the committee.

Mr. GOODYKOONTZ. You are here in your representative capacity——

Mr. WOODRUFF. I am here in my representative capacity only.

The CHAIRMAN. You do not claim to have any personal knowledge of these matters?

Mr. WOODRUFF. The only information I have, Mr. Chairman, is information that I have received in the way of documents and information I have received in the way of witnesses, and I am prepared to present those witnesses to the committee.

Mr. DOMINICK. I am just asking my questions, in view of what happened here a few days ago, so far as Mr. Keller is concerned, in the matter which the committee has under investigation.

The CHAIRMAN. My idea as to Mr. Woodruff is that if Mr. Woodruff desires to testify, of course he has to be sworn, just like anyone else. But Mr. Keller appeared here with his attorneys, and of course his attorney made similar statements that were not sworn to; and of course if Mr. Woodruff should desire we might permit him to go ahead and make these preliminary statements that are not in the nature of evidence.

Mr. WOODRUFF. Not at all; and I will say again, Mr. Chairman——

The CHAIRMAN (interposing). And I will add that if he should desire to state any facts, or anything in the nature of evidence, he should give them under oath, the same as any other witness.

Mr. WOODRUFF. I can produce the witnesses who will give the facts under oath.

Now, I will submit to the chairman that if I, for instance, should be sworn here, and should testify to whatever things had been told me, the chairman knows, and every member of the committee knows, that everything that I might testify to under those conditions would be considered as hearsay and not as relevant.

Mr. JEFFERIS. Mr. Chairman, Mr. Woodruff has stated that the only information he has here, on subdivision No. 1 of specification No. 14, is a letter that he received from a man of the name of Greenberg. He says that he does not know anything about the facts as to that personally. Now, certainly, that is not evidence, because he gets a letter from somebody in Chicago; and I do not think we ought to incumber the record with any letters. Anybody could write letters.

The CHAIRMAN. I do not think that ought to go in.

Mr. WOODRUFF. Mr. Chairman, I have not suggested at any time that this letter go into the record. But I am here on the theory that the committee can have the facts if it wants them.

The CHAIRMAN. We want to examine it for the purpose of determining what it contains.

Mr. WOODRUFF. After the committee has seen the letter, and has seen what the man says, that he has witnesses who can substantiate certain facts stated by him whether or not they want the committee to determine testimony in regard to subdivision 1, specification 1

Mr. HERSEY. Is Mr. Greenberg present?

Mr. WOODRUFF. I think not. He is in Chicago.

Mr. HERSEY. Do you think you could get him before the committee?

Mr. WOODRUFF. I think there is no question but that he will come if he is subpoenaed by the committee. I assume no responsibility for this.

The CHAIRMAN. Let me look at the letter.

(Mr. Woodruff hands letter to the chairman.)

Mr. WOODRUFF. I will say that he came into my office and told me a number of things, and I said to him, "Write it down and sign it."

Mr. HICKEY. May I ask who Mr. Greenberg is?

Mr. WOODRUFF. I could not tell you.

Mr. HICKEY. You say he is a business man?

Mr. WOODRUFF. He is a business man of Chicago.

Mr. HICKEY. You do not have a personal acquaintance with him?

Mr. WOODRUFF. None at all. I assume no responsibility for him.

Now, that is so much for subdivision No. 1.

The CHAIRMAN. You mean subdivision No. 1 of specification 14?

Mr. WOODRUFF. Yes; that is all I care to say about subdivision No. 1.

Now, Mr. Chairman, I will state to the committee that, as the chairman knows, some time in September, I believe, I wrote him a letter in which I stated that whenever the hearings were held I would ask to be permitted to submit such evidence as at that time seemed desirable. That letter grew out of the charges I had made against the Attorney General on the floor of the House on April 11, 1922.

I will say that when I wrote that letter to the chairman conditions had become somewhat different than they were on April 11, and I am frank to say that they have changed still further since the date of my letter. For that reason I, perhaps, will not at this time attempt to submit it to the committee. Without that, I would have submitted it earlier in the year.

Mr. JEFFERIS. Changed in what way?

Mr. WOODRUFF. Due to the fact that the Attorney General has started suit, or taken the necessary action, in at least six of the eight or nine cases I mentioned in that speech.

Mr. FOSTER. As to those cases in which suits are pending or action begun, your idea is that, perhaps, it would not be advisable for the committee to go into those at this time?

Mr. WOODRUFF. I am very sure it would not. And I have no desire to embarrass the Attorney General. As I stated before, I am here in a spirit of helpfulness, to help the committee to get at the facts; and while I temporarily, at the suggestion of the chairman of the committee, may assume the rôle of prosecutor; I want the committee distinctly to understand that I am not here in the rôle of a persecutor. I want that very clearly understood.

Mr. FOSTER. In which one of these subdivisions have the suits been filed? Can you tell us anything about that?

Mr. WOODRUFF. I think the only one I mentioned in my speech is the American Electro Products Co.; and while suit has not been filed in that case, a counter claim has been filed in the Court of Claims, which is the correct procedure, as I understand.

Mr. FOSTER. Aside from subdivision No. 1, are there any other subdivisions in specification 14 that you want to take up?

Mr. WOODRUFF. Yes; I want to take up subdivision 4.

Mr. YATES. Subdivision 4 of specification 14?

Mr. WOODRUFF. Yes.

And I want to say to the committee further that in view of a conversation which I had with one member of the committee early in this proceeding, at which time he intimated to me that it was not going to be the policy of the committee to receive any evidence other than evidence which was presented by Mr. Keller, I then and there washed my hands of the whole affair, and have not proceeded to get my evidence in shape to present it.

The CHAIRMAN. I certainly never made any such statement as that.

Mr. WOODRUFF. No; I am not quoting the chairman. I am quoting a certain member of the committee; and the way he presented the matter to me I considered that that procedure was all right. I have no criticism to offer of him.

The CHAIRMAN. The attitude of the committee was this: That as long as Mr. Keller was presenting evidence we would wait and let him finish; that was all.

Mr. WOODRUFF. I am not in any way criticizing the committee—not in any way. It seemed to me, from the way that thing was presented to me, that it was quite the correct procedure.

Now, inasmuch as the notice that I have had of the desire of the committee for me to appear before it has been short, and inasmuch as I am not an attorney, I think, in behalf of orderly procedure, that the committee, if it has any other person to hear—and I understand from conversation with my friend from South Dakota, Mr. Johnson, that he is ready to proceed—I would suggest that the committee hear Mr. Johnson first and that it hear me later. That would give me some opportunity and more time to get my evidence together.

Mr. FOSTER. Before you leave subdivision 4, do you want to call the committee's attention to any line of testimony?

Mr. WOODRUFF. I will send for the necessary documents and present the witnesses when the time comes.

The CHAIRMAN. Now let us get at this situation: Have you any evidence on any of the other charges?

Mr. WOODRUFF. I only wish to submit a few observations on, I think, subdivision No. 10 when the time comes.

Mr. CLASSON. Subdivision No. 10 of specification 14?

Mr. WOODRUFF. Subdivision 10 of specification 14.

Mr. SUMNERS. Mr. Chairman, in view of the statements made by this witness——

Mr. WOODRUFF (interposing). I object to being called a witness.

Mr. SUMNERS. Well, I will not call you a witness if you object to it.

Mr. WOODRUFF. I am temporarily assuming the duties of prosecutor, at the suggestion of the chairman of the committee.

Mr. SUMNERS. I did not mean to refer to you as a witness. But I wanted to suggest that in order that we may get along and make some progress, Mr. Chairman, we let him go and call the other gentleman to whom he referred.

The CHAIRMAN. I think we may do that. But I think that the committee may be interested at this time in knowing what other



matters he has, so as to to arrange for further hearings in regard to any such matters.

Mr. WOODRUFF. I will say, Mr. Chairman, along that line, that if it is the desire of the committee to investigate any other things than those covered in this bill of particulars, I may want to submit some evidence on some other cases.

Mr. HERSEY. Do you mean something outside of the Keller charges?

Mr. WOODRUFF. I mean something outside of the Keller charges.

The CHAIRMAN. My impression would be—I do not know what attitude the committee might take in regard to it—that these are the charges that we have jurisdiction to investigate. The charges were made in the House. We pursued the course that has been customary in the House, asked for specifications. Now, we could have gone back to the House and had the House order something definite; but we did not want to do that if unnecessary. We asked Mr. Keller what, in fact, were his charges? He made these charges; and I assume that that is what we are authorized to investigate, and I shall hold, unless the committee determines otherwise, that we are not authorized to investigate anything else.

Mr. WOODRUFF. Mr. Chairman, I am not in any way taking issue with the chairman on that. All that I wanted to do was to learn what the committee expected of me; that is all. And if that is the decision of the committee, I am quite satisfied.

Mr. FOSTER. I do not wish to differ at all with Mr. Woodruff, but I am just trying to get in my mind this point: Under specification No. 14 he has referred to subdivision 1 and subdivision 4—

Mr. WOODRUFF (interposing). No.

Mr. FOSTER. Subdivisions 1 and 4?

Mr. WOODRUFF. No. I have only referred to No. 1—that is the Briggs and Turavis matter—by simply turning over to the chairman a letter that I have received which contains all the information that I have.

Mr. FOSTER. All I want to learn at this time is whether there is anything besides No. 1 and No. 4 that is not the subject of litigation, so that the committee, at the recess to-day, can go over the field that it has open under these specifications.

Mr. WOODRUFF. I will say this to the gentleman from Ohio: That there are many subdivisions under specification 14 upon which I have no information, and I am not saying—

Mr. FOSTER (interposing). Perhaps I did not make myself clear. How many subdivisions under specification 14 are not now in litigation?

Mr. WOODRUFF. I can not say as to that.

Mr. FOSTER. That is what I wanted to know.

Mr. WOODRUFF. All I can say is that there are two more, aside from the Briggs and Turavis matter, that I care to submit any evidence on, and those are, I believe, No. 4 and No. 10.

Mr. JEFFERIS. Subdivisions Nos. 4 and 10 of specification No. 14?

Mr. WOODRUFF. Yes; No. 4 and No. 10 of specification 15.

Mr. YATES. That is in connection with war frauds cases?

Mr. WOODRUFF. Yes. Now, Mr. Chairman, I do not believe it is inimical to the interests of the Government or to the people of the United States to disclose to the committee and put in the record a

list of attorneys that the war-frauds section of the Department of Justice has employed and the dates upon which they entered upon their present duties. I am going to ask that that be done; and that the Attorney General supply the committee with that information for the record.

Mr. HICKEY. Why do you offer that testimony?

Mr. WOODRUFF. If the committee wants to know why I charged neglect of duty, that is one of the things I need.

Mr. SUMNERS. Mr. Chairman, I am going to take the liberty again of suggesting that this gentleman has said that he is not ready to proceed.

The CHAIRMAN. No; he said he is ready under subdivision No. 4.

Mr. WOODRUFF. No.

Mr. SUMNERS. No; he did not say he was ready under subdivision No. 4, and I do not see why he should detain this gentleman when he says he is not ready to proceed and the other gentleman is ready to proceed.

Mr. WOODRUFF. But I want to call the committee's attention to the fact that the things I am asking for are necessary to the conduct of the proceedings; it is necessary that they should be placed in the record and be at the disposal of the committee and at the disposal of myself.

The CHAIRMAN. What is that you desire a list of?

Mr. WOODRUFF. I want a list of the attorneys now employed in the war-frauds section of the Department of Justice and the dates upon which they entered upon their present duties.

The CHAIRMAN. That is, you mean the attorneys?

Mr. WOODRUFF. I mean the attorneys; yes, sir. Also a list of the civil suits filed with the courts, the dates upon which the suits were filed, and the exact amounts sought to be recovered in each case. Now, there can be no objection to that going into the record, because surely, when a bill of particulars is filed in court, the committee should have an opportunity to see that bill of particulars.

Mr. HERSEY. What do you mean? Civil suits against anybody mentioned in the proceedings here?

Mr. WOODRUFF. I beg your pardon?

Mr. HERSEY. Do you mean civil suits that have been mentioned in the proceedings here?

Mr. WOODRUFF. No; under the war-frauds section—under the fourteenth specification.

Mr. MONTAGUE. Are civil suits mentioned in these specifications?

Mr. WOODRUFF. They are. I will state to the gentleman that the Attorney General states—

That there have been filed by the Department of Justice in the courts of the country more than 30 important civil suits for the recovery of more than \$150,000,000, out of which it is claimed the Government was defrauded. In addition thereto, more than 40 persons have been indicted for crimes growing out of such so-called war frauds transactions—

The CHAIRMAN (interposing). What are you reading from?

Mr. WOODRUFF. I am reading from the Attorney General's answer.

Mr. HERSEY. What specification number?

Mr. WOODRUFF. Page 78, at the top of the page.

In addition thereto, more than 40 persons have been indicted for crimes growing out of such so-called war frauds transactions

Mr. JEFFERIS. Do you question that statement at all?

Mr. WOODRUFF. Not at all. I am simply asking for information. My interest in the war frauds section is only that of a Member of Congress, who wants to see the Department of Justice function. Now, the Attorney General has stated here that he has started a certain number of suits for the recovery of \$150,000,000, and that he has indicted 40 men, and I think it is due to the Attorney General himself that that information be given to the public and this committee.

Mr. FOSTER. Mr. Howland, have you any objection to that?

Mr. HOWLAND. I would be very glad to do that, so far as I am concerned.

Mr. WOODRUFF. And I think that is a thing that should be in the record.

Mr. BIRD. Mr. Chairman, I would like to ask Mr. Woodruff a question, please. Mr. Woodruff, your proceeding some little time ago was in the nature of leading up to an investigation, was it?

Mr. WOODRUFF. Yes.

Mr. BIRD. Now, this is a proceeding of a vastly different nature.

Mr. WOODRUFF. I understand that.

Mr. BIRD. This is a procedure touching high crimes and misdemeanors of the Attorney General of the United States from the standpoint of impeachability?

Mr. WOODRUFF. Yes.

Mr. BIRD. Does this evidence that you are suggesting here touch the proposition of impeachability?

Mr. WOODRUFF. It does.

Mr. BIRD. It goes to impeachment, rather than to a mere investigation, does it?

Mr. WOODRUFF. It goes to impeachment, yes; that is my purpose in having it put into the record.

Mr. BIRD. All right.

Mr. WOODRUFF. I would like to ask for a list of the men indicted under the war frauds transactions and the dates on which the indictments were returned.

Mr. HOWLAND. By this administration? By this Attorney General?

Mr. WOODRUFF. By this administration, of course; I did not go back of that.

Mr. GRAHAM. What was that? I did not get it.

Mr. WOODRUFF. By this administration. I would also like to ask for a list of all settlements of war fraud cases made by the Department of Justice and the dates thereof.

Mr. HERSEY. Do you mean war frauds transactions?

Mr. WOODRUFF. I mean war frauds.

Mr. GOODYKOONTZ. In addition to that there was a request made of the Attorney General—I do not know by whom it was made—that in some cases the Government was to reveal the exact status of the suits and what the department was doing in them, but for business reasons it was not desirable to publish that information. If the information got out, it would have had a very drastic effect on the credit of the company, the corporation that had made the settlement, and the department was anxious to collect as much money as possible, and were therefore interested to see that the debtor did not collapse, break down, and fail. How far do you think we ought to go in a matter of that kind?

Mr. WOODRUFF. Why, Mr. Chairman, I will say this, that if there are any business institutions in this country who have been overpaid by the Government—and I presume many of them have been overpaid when they did not know they were overpaid—if any of those business institutions have come to the Department of Justice and settled those claims without a suit, that is entirely to the credit of the people who have been overpaid, nothing to their discredit, and I see no reason whatsoever why that information should not go into the record.

The CHAIRMAN. Can you see any reason why that would establish the fact that the Attorney General was guilty of anything?

Mr. WOODRUFF. No; I do not. But that all has a bearing, however.

The CHAIRMAN. I can not see what bearing it has. We are expected to try charges here.

Mr. MONTAGUE. I would like to ask this question: The evidence to-day, the facts which you wish now to present, do they not relate rather to your charges than to the charges of impeachment?

Mr. WOODRUFF. Well, I should imagine from reading specification No. 4 that they were very much the same thing.

Mr. MONTAGUE. I just wanted to have your opinion on that.

Mr. WOODRUFF. And I want to repeat again that I am here temporarily assuming the rôle of prosecutor at the suggestion of the committee, not at my own suggestion.

Mr. MONTAGUE. I am just after the facts; I do not care what rôle you assume.

Mr. WOODRUFF. Now, further, Mr. Chairman, I would like to ask that all documents in the Wright-Martin case, having to do only with the beginning of suit—I want to make that plain; I want to emphasize that—having to do only with the beginning of suit, together with all correspondence between the Department of Justice and the attorneys for the defense, be submitted for the inspection of myself and my attorney, and then I have one more request—

Mr. HERSEY (interposing). Let me ask you right there. You say you want the Attorney General to furnish us with information at the date of the commencement of these suits; would you take that statement as evidence in the matter, satisfactory to you?

Mr. WOODRUFF. Well, I had no idea of questioning any evidence submitted by the Attorney General on these questions that I have asked here. I have not any desire nor any intention to do that.

Mr. HERSEY. You would not want copies of the proceedings or anything of the kind filed?

Mr. WOODRUFF. No.

Mr. HERSEY. But simply the dates of the commencement of the prosecution?

Mr. WOODRUFF. I would say to the committee this, that no member of this committee, nor the Attorney General himself, can be more careful than I will be in protecting the interests of the United States Government in this proceeding. I think I have demonstrated the fact that I am somewhat concerned with the welfare of the United States.

Mr. CHRISTOPHERSON. Who is your attorney?

Mr. WOODRUFF. Mr. H. L. Scaife.

Now, just one other request, Mr. Chairman, and then I will surrender the floor to the gentleman from South Dakota, with the permission of the committee.

The CHAIRMAN. Let me say this in regard to the attorney. I do not know what the committee may determine to do, but in all the investigations that I have examined into the committee has been its own attorney. Any man who has any information can furnish that information to the committee; the committee calls the witnesses and does its own examining. Now, that has been, I think, the general custom. We have deviated from it in reference to Mr. Keller, and we did it for this reason: It became apparent that we could not do anything with him unless he was permitted to run the thing to suit himself.

Mr. WOODRUFF. Well, I do not think the chairman will find that I want to do anything other than what is quite proper.

The CHAIRMAN. Personally I became satisfied—I do not know whether this ought to go into the record—I became satisfied that Mr. Keller would not give us anything unless he was allowed to do anything he wanted to. If you will take the records of proceedings of this kind, you will find that no such proceeding as we carried on with Mr. Keller has been customary. The committee determines its own course, goes ahead, and gets whatever information it can and cross-examines the witnesses.

Mr. WOODRUFF. Mr. Chairman, I trust that inasmuch as I am not an attorney and that I am here at the suggestion of the committee to help in this matter all that I can, the committee will indulge me to that extent.

Mr. GRAHAM. There is no occasion, it seems to me, for having an attorney. If you have any facts to submit, the committee is capable of receiving those facts and weighing them and making reports upon them, and why you should be guarded by an attorney is a curious thing to me. I do not understand it.

Mr. WOODRUFF. There is nothing curious about it, I will say to the gentleman from Pennsylvania. I have already stated that I am not a lawyer.

Mr. GRAHAM. That is apparent.

Mr. WOODRUFF. And that in behalf of orderly procedure, getting this evidence before the committee in the way it ought to be, I should have an attorney.

Mr. GRAHAM. Can you not trust the committee to take care of the orderly procedure? The committee can take care of the orderly procedure, can it not?

Mr. WOODRUFF. I beg pardon.

Mr. GRAHAM. The committee can take care of the orderly procedure. We do not want to employ an attorney to help us in that.

Mr. WOODRUFF. I understand; but the committee has requested that I come here and submit evidence. Now, I have taken it upon myself to retain counsel.

Mr. GRAHAM. Well, I am sorry for that.

Mr. FOSTER. Let us take care of that when we come to it.

Mr. WOODRUFF. I would ask that the stenographer's report of the proceedings be submitted to me from day to day.

The CHAIRMAN. We can not do that. That is a practical impossibility. We do not get the transcript until the day following a hearing. A similar demand was made by Mr. Keller. When it comes some of the parties may desire to look them over to see whether there has been any incorrect statements. They want to iron out grammatical errors, for instance, that would look bad in the record.



That is common custom. We do not permit anybody to change the record, but we are permitting, just as they always have been permitting, correction of the form of a statement. One person asks a question while another person is asking a question, and you never can get a record perfectly free from error under those circumstances.

Mr. WOODRUFF. I will submit to the chairman that it is quite as necessary, perhaps, for me to have an opportunity to make those grammatical corrections as it is for any member of the committee.

The CHAIRMAN. As far as that is concerned, that is permitted before it goes to print; we have always had a rule permitting that, not only to the members of the committee but to the witnesses that appear, not to permit any change in the record but simply to straighten out the language.

Mr. JEFFERIS. I suppose Mr. Woodruff comes here just like anybody else would, anxious to assist the committee.

The CHAIRMAN. Certainly.

Mr. FOSTER. I have been trying to see it for a week and have not yet seen it.

Mr. SUMNERS. In regard to Mr. Woodruff's suggestion in regard to an attorney, it seems to me that that is about the only thing he has suggested here that ought to be settled now, if I may be pardoned for saying it, because if he is going to have an attorney, he wants him to begin to prepare the matters to present, and if that thing is ever to be settled, now is the time to settle it.

The CHAIRMAN. That he is, of course, at perfect liberty to do. That is a matter we do not control. If he wants to prepare evidence to be presented and have an attorney to aid him in that, that may be done.

Mr. WOODRUFF. Then, Mr. Chairman, if that is——

Mr. SUMNERS (interposing). Pardon me there. Your situation, the situation of this particular gentleman, is a little different, a little bit different from that of the ordinary witness. He is not a witness at all; he comes here, if I understand his position, to help get before this committee the testimony of other gentlemen.

Mr. WOODRUFF. At the request of the committee.

Mr. SUMNERS. At the request of the committee. He says he is not skilled in such things and that it would be helpful to him to have the assistance of an attorney in doing that work for the committee. That is the peculiar situation that he is in.

Mr. MICHENER. Mr. Chairman, in reference to the request from the committee, as I understand it, the committee never took any action on that. Mr. Keller filed these charges, and Mr. Woodruff appeared before the chairman and stated that he wanted to be heard.

Mr. WOODRUFF. No; I did not. The gentleman is misinformed.

Mr. MICHENER. Well, I am just stating it as I understand it; that later the chairman wrote Mr. Woodruff a letter suggesting that inasmuch as he had made that request the chairman advised the committee that he had advised Mr. Woodruff that the committee would be pleased to hear him along the line that he, Mr. Woodruff, had suggested.

Mr. WOODRUFF. No; I would like to read the letter—I want to read the letter of the chairman into the record.

The CHAIRMAN. There isn't anything in the letter except the fact, that I invited him.

Mr. WOODRUFF. I will say to the gentlemen that the chairman of the committee merely suggested that I appear before the committee and give it such assistance as I could in determining those facts.

Mr. FOSTER. That is the very thing that was confusing me, if the chairman will pardon me, Mr. Woodruff taking the position he is here at the request of the chairman, as he says, as a special prosecutor.

The CHAIRMAN. Oh, no.

Mr. WOODRUFF. No; I said merely in the position——

Mr. FOSTER (interposing). To assist the prosecution. My idea was that the committee never authorized any communication to Mr. Woodruff other than to invite him in here to give what assistance he could to the committee in the way of giving testimony on any of these charges. I think he is here not to assist the prosecution but to assist the committee in securing evidence and witnesses.

Mr. WOODRUFF. I will submit, Mr. Chairman——

Mr. CHANDLER (interposing). May I suggest that if you are simply here to assist the committee, with reference to your having a lawyer, testimony is of two kinds, oral and documentary, and if you have a witness in mind who wishes to render oral testimony, why not give the committee the name of the witness and let us subpoena him; if you have a document in mind, let us subpoena somebody who is in possession of the document. What is the necessity of having a lawyer to aid you, or complicate the proceedings by having an attorney? You are a most intelligent Member of Congress——

Mr. WOODRUFF (interposing). Thank you.

Mr. CHANDLER (continuing). You know how to protect your rights, even though you are not a lawyer, and all you want to do is to suggest to us where we can get either oral or documentary testimony.

Mr. WOODRUFF. I will say to the gentleman from New York that when I take this matter up I will produce all the names of witnesses I want and the documents so far as I can.

The CHAIRMAN. Let me say that after these charges were made in the House and after the end of the second session of Congress, which occurred just a few days after those charges were made, I received a letter from Mr. Woodruff suggesting that he was willing to furnish testimony on these charges. Now, at that time, of course, there had been no specifications.

Mr. WOODRUFF (interposing). I stated, I think, if you will remember——

Mr. GRAHAM (interposing). Let the chairman finish.

The CHAIRMAN. It was because of that that I wrote this letter inviting you to present whatever you might have.

Mr. WOODRUFF. Well, I will say that inasmuch as the committee has expressed a willingness to go ahead with the gentleman from South Dakota, that I will withhold my evidence until he has completed his statement.

Mr. JEFFERIS. I want to take this opportunity again of saying that in my judgment, when Mr. Keller quit and abandoned his charges that they ended.

The CHAIRMAN. I did not think so myself. One reason why I am not very enthusiastic about allowing an attorney is this: It prolongs the investigation with a lot of speeches that fill the record and serve

no useful purpose. An attorney will usually undertake to argue every question of refusing or admitting testimony, seek to control the proceeding, and make all sorts of statements in the record without being sworn.

Mr. WOODRUFF. I will say to the chairman that we will try and not encumber the record unnecessarily.

The CHAIRMAN. That is one reason the committees usually have not indulged in the practice of allowing attorneys to present the matter. We did it with Mr. Keller because we had to.

Mr. THOMAS. I thought it was because the committee wanted to make all the speeches themselves.

The CHAIRMAN. Yes; we like to make some of them ourselves.

Mr. WOODRUFF. If there is nothing further, I will ask to be excused at this time.

The CHAIRMAN. Now, Mr. Johnson, if you desire to appear, we will hear you.

### STATEMENT OF HON. ROYAL C. JOHNSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF SOUTH DAKOTA.

Mr. JOHNSON. Mr. Chairman and gentlemen of the committee, on December 15 of this year I received this letter from the chairman of the committee.

Inclosed find copy of the charges made by Hon. Oscar E. Keller on the 11th day of September, 1922, in the House of Representatives, against Hon. Harry M. Daugherty, Attorney General of the United States, together with the specifications filed by Mr. Keller in amplification of his charges and the answer of Attorney General Daugherty to such charges.

Hearings have been in progress for some time before the Committee on the Judiciary on these charges. If you know of any witnesses that can substantiate any of the charges, I wish you would give to the committee the names of such witnesses, so that I may be able to subpoena them and have them appear. The committee will greatly appreciate any assistance you can give looking to a thorough investigation of any of the charges embodied in the specifications.

Very truly yours,

A. J. VOLSTEAD,  
*Chairman Judiciary Committee.*

To this on the next day I replied as follows:

MY DEAR MR. VOLSTEAD: I have your letter of December 15, in which you state: "Hearings have been in progress for some time before the Committee on the Judiciary on these charges. If you know of any witnesses that can substantiate any of the charges, I wish you would give to the committee the names of such witnesses, so that I may be able to subpoena them and have them appear. The committee will greatly appreciate any assistance you can give looking to a thorough investigation of any of the charges embodied in the specifications."

If you will refer to page 5708 of the Congressional Record of April 7, 1922, and to pages 5858-5869 of the Record of April 11, 1922, you will find that I made certain charges concerning the sale of surplus property and asked for an investigation thereof.

It will be a pleasure to me to assist the committee in every way in a thorough investigation of these charges, and if the committee desires I can submit at once a list of witnesses, including Army officers and civilian accountants, who in my opinion will substantiate every statement made to the House.

I shall also, if the committee desires, submit a list of records in the War Department which the committee may have brought before it.

The House, on June 1, 1922, as will be shown by the Congressional Record of that date, page 8658, decided that these charges should not be investigated.

It is a pleasure to me to know that the Judiciary Committee apparently desires to go into these matters thoroughly and I shall be glad to cooperate in every way. If

this is done, I respectfully ask the privilege of appearing to cross-examine certain of the witnesses.

Sincerely yours.

That was signed by myself.

Now, gentlemen, I appear as a Member of Congress representing the second South Dakota district, at the request of the committee. It should be said in the beginning that at no time have I ever had any connection with these impeachment charges. I did not know that they were to be filed; I never saw them before they were filed; no one ever consulted me concerning them, and I knew nothing about them until they were submitted to the House.

It should be said that, in my opinion, these charges are not based either on law or facts. My own theory of the law is that when an attorney general goes to court, presents his case to a court, he is carrying out the duties of his office. For four years I was the attorney general of my own State, the State I now represent in Congress, and as I understood the duties of an attorney general it is his business to go to court and it is not impeachable whenever he presents his case.

Others of these charges, even if they were admitted to be true, would not be impeachable.

The only reason that I could see that the chairman of this committee or the committee desired me to appear would be because of proceedings in the Record, and the only mention that I have made that could in any way be construed as touching this case are matters of official record. On this page of the Record, 5708, April 7, 1922, I offered an amendment to the appropriation bill providing for the expenses of the Attorney General, as follows:

For attorneys, accountants, and clerical assistants to aid the investigation and prosecution of fraudulent war claims against the Government, and investigation of settlements made of war contracts and prosecution in such cases as the Attorney General shall deem necessary, \$500,000.

There was some debate concerning that appropriation or that amendment. Mr. Husted, of New York, chairman of the subcommittee having in charge this appropriation bill, and a very talented and well-known Member of Congress at that time, on the same page stated—first, I must go back of that. Mr. Mann, of the House, said:

Has the gentleman—

Referring to myself—

consulted the Attorney General or anybody in the department?

I replied as follows:

I will say that I have not consulted the Attorney General.

Then the chairman of the committee said:

Mr. Chairman, I think I can say to the gentleman from South Dakota that he is out in his estimate just the amount carried in his amendment. The Department of Justice has not asked for this item, but the Department of Justice is engaged in this work and has ample funds to carry it on at the present time. It does not need an additional dollar for this purpose, and if this money was appropriated it simply adds \$500,000 to the amount carried in the bill, which we would have to raise by taxation and which the department could put to no good purpose.

Mr. JEFFERIS. That was Mr. Husted?

Mr. JOHNSON. That was Mr. Husted, chairman of the committee, who had been consulting with the Department of Justice, and he

says himself—he said they did not need the money. I disagreed with him and within two weeks the Attorney General came to the same conclusion at which I had arrived before; appeared before this same committee—I attended the hearings—and said he needed \$500,000 and that my statement was correct; that they could use the money. They had evidently decided they were going to do some prosecuting, and all of the subsequent prosecutions have been had by reason of this appropriation. It seemed to me at that time that there was no——

Mr. GOODYKOONTZ (interposing). Would you mind telling me the date of the debate?

Mr. JOHNSON. On April 7, 1922, on page 5708. It seemed very evident to me from a statement of the chairman of the committee that there was no intent to prosecute, so on April 11, 1922, page 5858 of the Record, I submitted some observations to the House, and I would like to have those observations and the statements, the short debate on April 7, incorporated in the record.

Mr. HICKEY. Whom do you propose to submit in justification of the statement made on the floor of the House and in support of the charges we are hearing here?

Mr. JOHNSON. As a matter of fact, the Attorney General was not mentioned in these charges. I am simply here at the request of the committee to say that I can prove immediately by witnesses every statement made on the floor of the House.

Mr. FOSTER. That was directed toward the War Department?

Mr. JOHNSON. I said the gentleman——

Mr. MONTAGUE (interposing). Permit me one moment—that is not the issue pending here. There is no attempt to impeach Mr. Johnson.

Mr. JOHNSON. I will say very frankly that I do not think it has anything to do with this proceeding.

Mr. MONTAGUE. He must prove the charges here made. If any statement he made on the floor of the House is pertinent to the charges here made, then that is another question, but merely sustaining the charges he made in a speech is not relevant in these proceedings, unless he can show specifically that they relate to the precise charges found in these specifications.

Mr. YATES. Mr. Johnson, as I understand you, the purpose in asking that this be inserted in the record is on your own account; it does not refer to the Attorney General?

Mr. JOHNSON. I will say, Governor Yates, that somebody dragged me before this committee. The only time that I have ever discussed anything that would in any way touch upon this proceeding was in the remarks I made on April 22. I do not think they have anything to do with this proceeding at all, but I am ready to prove them if the committee wants them proved.

Mr. MICHENER. If that is our colleague's position here, and we all have—some of us, at least—very much respect for his judgment and opinion on these things, and he comes in frankly and says that what evidence he has does not have anything to do with this specific charge—now he has been asked here by the chairman to present evidence bearing upon the subject. If this evidence does not bear upon the subject in the gentleman's own judgment and opinion, I do not see why we should detain him.



Mr. CHRISTOPHERSON. They do not. I read that speech carefully yesterday. I went through it carefully and it does not mention Mr. Daugherty in a single sentence.

Mr. JOHNSON. Just to make the record show this clearly, and show that the committee, in my judgment, has no business going into this at all, I will just mention the cases very shortly without cumbering the record.

Mr. SUMNERS. Let me ask you this question, Mr. Johnson. Do you have any information yourself, or do you know of any witness that has any information with reference to any of the charges that have been preferred against the Attorney General?

Mr. HERSEY. By Mr. Keller.

Mr. SUMNERS. By Mr. Keller.

Mr. HERSEY. The impeachment charges.

Mr. JOHNSON. No, I have no information except as I have heard hearsay statements here and there.

Mr. SUMNERS. Well, from the information that you have received by hearsay, would you suggest to the committee the names of witnesses whom you believe could throw some light upon the charges that are contained here, filed by Mr. Keller?

Mr. JOHNSON. No; I could not. The charges that are filed here, if there would be any evidence at all, it would be contained in the Department of Justice, with which I have no connection and do not have access to. I will say to the gentleman that had it not been for the fact that conditions have entirely changed since April 11, 1922, and if it were not now evident that some of these prosecutions were being conducted by skilled and competent lawyers, my position in this case would be entirely different. In other words, if there could be shown a clear neglect of duty running over a long period of time and not prosecuting these cases, and there was, in my opinion, a clear neglect of duty from the expiration of the war until this summer, if that had continued, that would present an entirely different matter to the committee.

Mr. SUMNERS. Suppose it had not continued up to this time, but had continued for a certain time, as to show the Attorney General, by reason of neglect, might be guilty of high crimes and misdemeanors within the language of the Constitution, the fact that he now may be proceeding with all diligence—would that necessarily change the situation?

Mr. JOHNSON. As to that I would call the attention of the committee to this fact, that Mr. Palmer was Attorney General until about March 4, 1921.

Mr. SUMNERS. I suppose what he did in his administration has nothing to do with this administration.

Mr. JOHNSON. No; the present Attorney General could only be charged with what happened after March 4. Now, if he has brought actions within a year and prosecutes them diligently from that time on, I can not see where he could be chargeable with anything involving impeachment and indictment and expulsion from the House, which are three of the very serious things that can come to a man in public life and should be thoroughly substantiated.

Mr. CHRISTOPHERSON. Nor even with neglect.

Mr. JOHNSON. I do not think he could in a year's time, after taking over a whole department and having to discharge probably two-

thirds of the people—I do not think you could charge him with neglect of duty if he got diligent after prosecutions within a year.

Mr. SUMNERS. At the time your statement was made on the floor of the House, if it did indicate a neglect on the part of the Attorney General, it might have been a premature statement?

Mr. JOHNSON. No, I do not think so, taking into consideration this record which I read, which showed that they never intended to get any money. I do not think they realized the seriousness of the situation.

The CHAIRMAN. Let me call your attention to this——

Mr. SUMNERS (interposing). I would like to ask one more question, Mr. Chairman. If the Attorney General at that time, in the face of his duty, did not intend to prosecute, that in itself might constitute a ground for impeachment.

Mr. JOHNSON. Of course there is no way that I can tell, and I do not think the committee can, what was going on in the minds of some of these men in the Department of Justice. In other words, I do not see how you could determine their intention to such an extent that it would be impeachment.

The CHAIRMAN. Let me call your attention to one thing that I think might indicate some intention. All members of the committee are aware of the fact that the Attorney General sent to this committee a draft of a bill extending the time within which people could be prosecuted, if they were guilty of war frauds, from three years to six years. We passed it in this House and they passed it in the Senate and it became a law.

Mr. JOHNSON. Yes; I am very familiar with that.

Mr. SUMNERS. As a matter of argument that presentation was made by the Attorney General.

The CHAIRMAN. Of course it is a matter of argument on both sides.

Mr. JOHNSON. Could I say, Mr. Chairman, that I am very familiar with that statute, because that grew out of the investigation of the select committee on investigation of war contracts, of which Mr. Graham was chairman, and the initiative for that bill came from those of us on that committee.

The CHAIRMAN. But it came long before you made charges in the House.

Mr. JOHNSON. Yes, indeed.

Mr. FOSTER. You first brought this up about a year after the present Attorney General came in, as I understand it?

Mr. JOHNSON. April 7, 1922.

Mr. FOSTER. A year and a month. You then thought he was not active enough?

Mr. JOHNSON. Well, at that time my information was that they had nine little lawyers down there, about \$3,000 a year apiece, trying to prosecute all the war grafters in the world, and I knew they could not do it.

Mr. FOSTER. And as you look at the whole field now you take into mind, I take it, that when he came into office in March, 1921, he had to reorganize the department?

Mr. JOHNSON. He was compelled to.

Mr. FOSTER. And he had an unusual load because of the conditions war left there, and from the standpoint of the Attorney General's office the peak of the war work perhaps two or three years

after the war was over—that is, there was an accumulation of litigation?

Mr. JOHNSON. A great deal of it.

Mr. FOSTER. And after you first called attention to it, the subsequent conduct, the amount of work required to be done by a limited force, led you to the conclusion that you have just expressed. Now, his conduct in that matter is not impeachable, as you see?

Mr. JOHNSON. No, as Mr. Woodruff said, these cases that we mentioned, at least three-fourths of them are now being prosecuted and I do not think this committee ought to go into any of those cases. It would simply handicap the prosecution.

Mr. FOSTER. In other words, it is a big problem for any Department of Justice to be reorganized, even without the war load put on it?

Mr. JOHNSON. Certainly. I have been well satisfied since this appropriation with the way it has been conducted. There have been some very nice lawyers put on there, Mr. Reavis and others.

Mr. GOODYKOONTZ. Mr. Ralston, counsel for Mr. Samuel Gompers, put into the record an allegation or statement to the effect that you and certain other Members of the House had been shadowed by operatives of the Secret Service Branch of the Department of Justice. Do you care to comment on that?

Mr. JOHNSON. No; I don't think there is anything to comment on. I never believed it. I thought the Attorney General and Burns had too much sense—just common everyday sense.

Mr. CHANDLER. It did not arise from any complaint you had ever made, certainly, along that line.

Mr. JOHNSON. No; I am frank to say that when it came to me I investigated it for a few days and decided that I knew nothing of it, and I was satisfied that I was not shadowed. I would not have cared if I had been.

Mr. CHANDLER. What caused you to investigate it?

Mr. JOHNSON. I heard the statement made somewhere that that was true. I knew nothing of it. I don't believe it.

Mr. CHANDLER. You do not remember now the name of the person who made the statement?

Mr. JOHNSON. No; I did not pay any attention to it. I assume they have sense enough not to start shadowing Members of Congress.

Mr. BOIES. There would not be any cause for shadowing you, would there?

Mr. JOHNSON. Whatever they may be accused of, it is not a lack of common horse sense.

Mr. CLASSON. Let me ask you this question: Did the situation of which you complain in April, or to which you called attention in the House, change for the better before September 11, 1922?

Mr. JOHNSON. Oh, it had entirely changed.

Mr. CLASSON. So that at the time these impeachment charges were made that situation was cured?

Mr. JOHNSON. I will say that as far as the Department of Justice is concerned, I think it was cured. I do not think it has been cured so far as the War Department is concerned.

Mr. CLASSON. I am talking about the Department of Justice.

Mr. JOHNSON. I think there are a lot of officers who ought to be court-martialed instead of being promoted, and I think anybody who will read the record will agree with me.

Mr. CLASSON. Well, we are investigating the Department of Justice now.

Mr. JOHNSON. Certainly.

Mr. CLASSON. And I am confining my questions to that. You say that situation was cured before September 11?

Mr. JOHNSON. I think that the appropriation of this money and its expenditure has cured it, so far as I know.

Mr. FOSTER. Mr. Johnson, yesterday I read this speech of yours through, and I gathered from it that the entire speech, what you had in mind, was directed toward the War Department rather than the Department of Justice.

Mr. JOHNSON. I do not think the Department of Justice was mentioned in this speech except in one short sentence, in which I said, referring to these suits, "They have not been instituted, however, except in a very few cases, and every move made to secure prosecution is blocked by practically the entire War Department and a section of the Department of Justice." And that is all there was in this speech. I never could see why the committee wrote me about it.

Mr. SUMNERS. I do not either.

Mr. JOHNSON. I do not see it yet.

The CHAIRMAN. Perhaps because of newspaper activities rather than because of anything you said.

Mr. JOHNSON. Well, I have no further observations to submit, gentlemen, unless members of the committee desire to ask me some questions, which I will be glad to answer.

Mr. HICKEY. Mr. Johnson has stated that he has no proof to submit in support of these charges pending here. He has been very frank and candid in stating his position, and that being the case, what he suggests—I do not see how he could be of particular aid to the committee.

Mr. JOHNSON. Replying to that. I would say that I not only have no proof on those charges but there are many of them with which I have absolutely no sympathy.

Mr. HERSEY. As I understand your position, Mr. Johnson, it is that so far as cases that are pending now are concerned they should not be investigated by this committee, in your opinion?

Mr. JOHNSON. Certainly. No Attorney General or prosecuting officer ought to be handicapped in the middle of the prosecution of a law suit by giving evidence to the defendants.

Mr. YATES. You think that would not be compatible with the best interest of the Government?

Mr. JOHNSON. Not where the case is started.

Mr. JEFFERIS. Mr. Johnson, suppose that the department is investigating other matters on which a suit has not been started, but they are busy gathering evidence and having the law briefed, and so forth, do you think it would be wise to go into a case of that kind?

Mr. JOHNSON. Now, I would say that I do not, and I want to carry the gentleman back to the time that Mr. Woodruff and I had before the House a resolution for the investigation of all of these cases. At that time we were satisfied that they were not being investigated, and that is the reason that we pushed the resolution which we submitted to the House. Whenever those cases are being thoroughly investigated, I would say that Congress nor any committee of Congress

Mr. JEFFERIS. You feel, Mr. Johnson, that after you brought these matters to the attention of the House and afterwards when an appropriation was made, some weeks after, giving the Attorney General money to employ additional counsel, that that was the real purpose that you were trying to accomplish in bringing the matter to the attention of the House in the way you did?

Mr. JOHNSON. That, and in addition to that, we commenced to prosecute. That was my sole object. I knew that there were nine lawyers down there, none of them getting more than about \$3,000 a year, most of whom had never appeared in any court in the world, and that they could not prosecute these cases. After we secured the appropriation over the protest of the committee, and apparently over the protest of the Department of Justice—at least Mr. Husted said so—after it was appropriated they went to work.

Mr. JEFFERIS. Of course Mr. Husted is not a member of the department.

Mr. JOHNSON. No; but he represented them in that case.

Mr. FOSTER. They were trying to cut appropriations, in your judgment, rather than to help the department, were they not?

Mr. JOHNSON. I do not think they ever thought about this appropriation. I do not think they appreciated the seriousness of these war-graft cases.

Mr. JEFFERIS. Do you think they realized the need of more help in the Department of Justice at that time?

Mr. JOHNSON. I think John Crim, Assistant Attorney General, down there did. I always thought that man would prosecute if we would just turn him loose, and he has proved it in the last little while.

Mr. DOMINICK. I believe you were a member of the Graham investigating committee?

Mr. JOHNSON. Yes, sir; that is the committee that took 19 volumes of testimony, and for two years I lived with that committee.

Mr. DOMINICK. And your complaint is against the War Department and not against the Department of Justice?

Mr. JOHNSON. Yes, sir; I would say in reply to your question that more than that, I happened to go through the service; I saw these things; I saw the cantonments built and I saw the grafting going on, watched every angle of it, both in France and at home, and immediately proceeded to get on that committee and proceed with the investigation, and got to the place where I thought somebody ought to prosecute, and it was up to some of us to take such action to see that we got a man and then see that he prosecuted, and I think they are doing it.

Mr. BOIES. Let us go to something else, Mr. Chairman.

#### STATEMENT OF HON. ROY O. WOODRUFF—Resumed.

Mr. SEYMOUR. May I say, Mr. Chairman, that if Mr. Woodruff and Mr. Scaife will come to the Department of Justice this afternoon we will submit all the files connected with the Wright-Martin Aircraft Corporation, mentioned in subdivision No. 4, and the Standard Aircraft Corporation, mentioned in subdivision No. 10 of specification 14.



Mr. WOODRUFF. Mr. Chairman, I will state for the benefit of the gentleman that we do not want to see all the files. I do not want to see them.

Mr. GRAHAM. He offers you whatever you want to see.

Mr. WOODRUFF. I appreciate it but I do not want to be placed in the position of having anybody anywhere at any time say that I was a party to disclosing any information that might possibly have been submitted to me on a case of this kind.

Mr. GRAHAM. We understand that, of course.

Mr. FOSTER. Whatever you want they are willing to give.

Mr. WOODRUFF. I appreciate that very much, and Mr. Scaife and I will take advantage of your offer.

Now, Mr. Chairman, I will say that some time during the afternoon we will submit a list of witnesses and documents that we may want presented.

Mr. GRAHAM. I want to inquire, Mr. Chairman, one thing. I have listened to a great deal of discussion that has no relevancy to what is before our committee. Now it is one thing to have a committee of investigation to find out certain facts with a view to the betterment of conditions in a department, and it is another thing to have a charge pending accusing some man of high crimes and misdemeanors and investigate his conduct for the purpose of impeaching him. That is what our committee was appointed to investigate and we are not going, unless over my protest, to degenerate into a mere investigating committee investigating certain charges in connection with the department, and I am sure that Mr. Woodruff would not ask the committee to do that, for we are here to determine this question of whether or not we shall report back this resolution directing impeachment, and that ought to be the scope and limit of the committee's labors.

Mr. WOODRUFF. I will say to the gentleman from Pennsylvania, Mr. Chairman, that I am here only to present evidence that is pertinent to charge No. 4 or subdivision No. 4 of specification 14. I have no desire to urge the committee or to insist that the committee go without the bounds of what they believe to be their duty in this particular instance. I am here merely to assist the committee to the best of my ability.

Mr. GRAHAM. May I ask this question: Is what you have to submit under subdivision 4 of specification 14—does it constitute, in your opinion, as an intelligent Member of the House, a basis for impeachment?

Mr. WOODRUFF. I think it does. And I will say further that an inspection of the records in the——

Mr. GRAHAM (interposing). Then I am in favor of hearing it.

Mr. WOODRUFF. Let me say this to the gentleman from Pennsylvania, that an inspection of the records in the Department of Justice this afternoon by Mr. Scaife and myself may disclose the fact that I am mistaken in this belief, and if so, I will come very frankly before this committee and so state.

Mr. FOSTER. Mr. Chairman, before Mr. Woodruff leaves, may I ask this question, in line with what was asked of Mr. Johnson?

Is it your notion that the Department of Justice has been shadowing Members of the House or Senate? That may be dignifying a

newspaper report, but that has come up repeatedly and was asked Mr. Johnson.

Mr. WOODRUFF. I did not intend to say anything about that, I will say to the attorney for the defense, but I had reason to believe that I was being shadowed. Now, I might or might not have been mistaken. I had reason to believe that my mail had been inspected. I had reason to believe that my office had been entered and documents taken out, but I will say to the committee that the fact that I might be shadowed by either one operator of the Department of the Justice or a thousand was a matter of the utmost indifference to me. Whether or not they came into my office and took any of the documents out was a matter of indifference to me because I had nothing there that I could not replace, and if they had at any time desired to inspect my mail I would gladly leave my mail unopened and ask them down there to open it in the morning and inspect it before I did.

Mr. GRAHAM. There is no evidence before this committee of anything of that kind.

Mr. WOODRUFF. I do not care anything about it, because it is a matter that concerns me not at all. I do not believe that simply because I am a Member of Congress I should be entitled to any more rights than anyone else when it comes to the supervision of the Department of Justice or any other department of the Government.

Mr. MICHENER. Have you any evidence, Mr. Woodruff, along that line?

Mr. WOODRUFF. Circumstantial only, and of such a nature that I do not want to bother the committee with it.

Mr. MICHENER. The reason I state that is that another witness earlier in the proceedings, as I remember it, indicated that this had been done.

Mr. WOODRUFF. I think I could produce evidence before the committee that would indicate that my mail had been inspected.

Mr. BIRD. Could you produce evidence as to who did it?

Mr. WOODRUFF. Yes; I could produce that evidence, but even though I did I do not think that that is anything of an impeachable nature and I do not know why the committee should take up its time with it.

Mr. CHANDLER. Leave it to the committee to judge whether it is of an impeachable nature or not. I would like to have what evidence you have that your mail has been tampered with.

Mr. BOIES. You have received letters that appeared as if they might have been opened?

Mr. WOODRUFF. Yes; frequently.

Mr. BOIES. That often occurs in general correspondence, doesn't it?

Mr. WOODRUFF. Yes; I will agree with you on that. I never have made the charge that that was done by the Department of Justice, and, as I said before, it is a matter of indifference to me whether it was or not. I care nothing whatsoever about it.

Now, Mr. Chairman, I will some time during the afternoon submit to the committee a list of witnesses and documents that we will ask you to call for.

Mr. JEFFERIS. That will depend on what you find down at the department?

Mr. WOODRUFF. Absolutely. Our action in the matter will be governed largely upon the result of our investigation of the records in the Department of Justice.

The CHAIRMAN. And at that time, when you make that inspection, determine what witnesses you want and also what records you want.

Mr. WOODRUFF. Yes, sir; after we make that inspection I will submit my request.

**STATEMENT OF HON. ROYAL C. JOHNSON—Continued.**

Mr. THOMAS. I want to ask Mr. Johnson a question.

Mr. Johnson, you speak of having introduced a resolution in regard to prosecution. Have you a copy of that resolution?

Mr. JOHNSON. I will say to the gentleman that it is given at the beginning of my testimony on April 11. I do not have it now.

Mr. THOMAS. Can you give me the substance of what that resolution was?

Mr. JOHNSON. Yes, it simply provided for a select committee of the House to investigate all these war fraud cases.

Mr. MONTAGUE. You say your testimony; you mean your speech?

Mr. JOHNSON. My speech, yes. It is given right in the speech of April 11, to which I referred in my statement.

Mr. THOMAS. Well, had any of these prosecutions begun at the time you introduced that resolution?

Mr. JOHNSON. Well, now, I do not know of any. There may have been some, and they may have been under investigation, but I did not know about that. They had no appropriation and no force to do very much, because they only had those nine lawyers.

Mr. THOMAS. Did the Attorney General ask for this appropriation of \$500,000 after you had made your charges?

Mr. JOHNSON. About two weeks afterwards.

Mr. THOMAS. About two weeks afterwards?

Mr. JOHNSON. It came from the President to the Budget Board from the Attorney General.

Mr. THOMAS. That was some time in April, 1921?

Mr. JOHNSON. April or May, 1921, or 1922.

Mr. THOMAS. 1922?

Mr. JOHNSON. Yes.

Mr. THOMAS. That is all.

Mr. JOHNSON. Mr. Chairman, might I be excused if there is nothing more that you want?

The CHAIRMAN. Yes.

Mr. HERSEY. Mr. Chairman, we might have an executive session now.

**IN RE COMMITTEE'S PROCEDURE.**

Mr. BIRD. There are other charges and specifications here, Mr. Chairman.

The CHAIRMAN. We do not know of anyone else at present who wants to appear.

Mr. JEFFERIS. Has the Attorney General or anybody appearing for him anything to say to the committee?

Mr. FOSTER. Mr. Chairman, why couldn't we clear up 14—that has been brought to our attention now—before we go to anything else?

Mr. BIRD. Clear up everything but that; that is to be attended to by Mr. Woodruff.

Mr. FOSTER. This inspection this afternoon may or may not clear up the remaining subdivision of specification 14.

The CHAIRMAN. So far as I know, no one else has made any charges or offered to introduce any testimony.

Mr. CHRISTOPHERSON. Didn't Mr. Burns ask the other day to introduce testimony?

Mr. SUMNERS. Mr. Chairman, you have indicated that you are going to have a meeting to-morrow. Do you contemplate that Mr. Woodruff will proceed to-morrow? If not, why should we have a meeting to-morrow?

Mr. GRAHAM. He can proceed this afternoon, he thought.

The CHAIRMAN. We ought to have a meeting to-morrow, in my judgment, because we ought to get through with this matter just as quick as we can. No one so far as I know has suggested to me or to the committee in any way—that there is any other testimony. Now my idea would be that we make an investigation of the Attorney General's office to the extent that we may have the power to get documents and get information from the various employees in the office.

Mr. FOSTER. We have taken them up one at a time and evidently have before us now specification 14, and Mr. Woodruff says that after the inspection this afternoon he will know whether or not he wants us to ask for additional witnesses. Now you would not call on the Attorney General to reply to 14 until the other side is through?

The CHAIRMAN. No; I suggest that we adjourn until to-morrow morning and see whether we have anything on 14.

What I was going to say is that when we have exhausted all persons that we can find that claim to have any testimony and get through with them we will determine what to do, so far as calling upon the Attorney General further is concerned.

It has been suggested that we go into executive session. The hearing will now be adjourned. We will stop for a few moments to determine when we will meet again, what hour. We will announce that later.

(Whereupon, at 12 o'clock noon, the committee went into executive session.)

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COMMITTEE ON THE JUDICIARY,  
HOUSE OF REPRESENTATIVES,  
*Wednesday, December 20, 1922.*

The committee met at 11 o'clock a. m., Hon. Andrew J. Volstead (chairman) presiding.

The CHAIRMAN. We are ready to proceed. Mr. Woodruff, have you anything to say to the committee?

**STATEMENT OF HON. ROY O. WOODRUFF—Resumed.**

Mr. WOODRUFF. I am prepared this morning to go ahead with the Wright-Martin case, but before I get to that I wish to say to the committee that perhaps I was a bit discourteous yesterday when the

matter before the committee was the question of shadowing Congressmen and matters of that kind, covered under a certain subdivision, of a certain specification, which I do not at this time remember.

If the committee cares to go into that matter, I would suggest that they call for the reports in the Department of Justice submitted by H. F. Crawford, Rocellar Gray, A. O. Raynor, J. W. Keats, and James Connally, from the period of April 11 until June 15. I am given to understand that if the committee inspects those reports they will find sufficient evidence there to justify the claim which has been made. We were not sent the reports, and consequently can not verify them, but I simply submit to the committee such information as I have relative to it, so the committee can take whatever action they see fit.

Mr. CHANDLER. Is this on the question of shadowing?

Mr. WOODRUFF. Yes.

The CHAIRMAN. Have you got the names there?

Mr. WOODRUFF. Yes [handing paper to the chairman]

The CHAIRMAN. Do you say from April 11 to June 15?

Mr. WOODRUFF. Yes.

The CHAIRMAN. That is this year?

Mr. WOODRUFF. Yes.

Mr. FOSTER. Mr. Woodruff suggested that he appeared here as prosecutor under 14. As I understand, the shadowing is not under 14. Will you assume the same position as to the shadowing?

Mr. WOODRUFF. I will not. As I told the committee yesterday, it is a matter of the utmost indifference to me whether that allegation is true or not, but I am simply placing in the hands of the committee such information as I have relative to that particular matter.

I will state to the committee that the morning session will be pretty well taken up with the submission of documents in the Wright-Martin case. I will ask the attorney for the defense to hand me a letter dated October 26, signed by J. M. Wainwright, Assistant Secretary of War, transmitting to the Hon. Harry M. Daugherty, the Attorney General of the United States, the papers connected with contract 2250, and supplements thereto, between the Government and the Wright-Martin Aircraft Corporation, in which letter attention is invited to the necessary files and the Attorney General requested to institute litigation as was deemed advisable, to—

Mr. HERSEY. (interposing). That is subdivision 4 of specification 14, is it?

Mr. WOODRUFF. Yes; protect the interests of the United States Government.

Mr. SEYMOUR. What others do you want? Do you want it right now? Perhaps looking over the file we could help you get them altogether?

Mr. WOODRUFF. The letter of the Attorney General to Mr. Weeks of November 15. I think that I can expedite this somewhat by handing to the defense a list of the documents.

Mr. SEYMOUR. There is a letter of October 26. I think you have had an opportunity to examine this file, and the papers are inserted here so that you can get readily to the one in question asked for.

Mr. WOODRUFF. Thank you very much. [Reading:]



WAR DEPARTMENT,  
OFFICE OF THE ASSISTANT SECRETARY,  
*Washington, D. C., October 26, 1921.*

The honorable, the ATTORNEY GENERAL,  
*Washington, D. C.*

SIR: I have the honor to forward the papers connected with contract No. 2250 and supplements thereto, between the Government and the Wright-Martin Aircraft Corporation. After a long and thorough investigation by the Air Service section of the War Department Claims Board, and extended hearings at which the claimant was present and introduced evidence, it was found by the Air Service section that instead of the Government being indebted to the claimant, the latter had been overpaid in the net sum of \$3,601,715.75. I concur in that finding.

Mr. GOODYKOONTZ. What is the date of the latter?

Mr. WOODRUFF. I have not completed the letter.

Mr. BIRD. You are reading?

Mr. WOODRUFF. I am reading. [Reading continued:]

Your attention is invited to the fact that there are additional and voluminous files of the Air Service section of the War Department Claims Board relative to this contract, occupying many file cases, some of which pay prove of value in case of litigation. However, it is believed the attached papers contain all the information necessary to enable you to act.

I request that you institute such litigation as you may deem advisable to protect the interests of the Government.

Sincerely yours,

J. M. WAINWRIGHT,  
*Assistant Secretary of War.*

On November 15, 1921, the Attorney General caused to be written to the Hon. John W. Weeks, Secretary of War, an acknowledgment of the foregoing letter and stated that the papers in the case had been forwarded to the United States attorney at New York City, with instructions that he make a careful investigation of this case and that he take such action against the Wright-Martin Aircraft Corporation as, in his opinion, was necessary to cover the amount of the claim in question.

I will read the letter into the record.

Mr. HERSEY. What you just read was not the letter?

Mr. WOODRUFF. No.

Mr. FOSTER. What he read was not the letter. The letter will speak of that.

Mr. WOODRUFF. The letter will speak of that, I will say to the gentleman from Ohio.

Mr. MICHENER. What you read was your statement. You have seen fit to prepare what you have to say in writing?

Mr. WOODRUFF. I thought it was better to do that in order to expedite matters.

Mr. MICHENER. What you say is in writing and you read from consecutive notes, so as to be consecutive?

Mr. WOODRUFF. Surely; in other words this evidence is prepared in the way of a brief. [Reading:]

NOVEMBER 15, 1921.

Hon. JOHN W. WEEKS,  
*Secretary of War, Washington, D. C.*

SIR: Receipt is acknowledged of your letter dated October 26, 1921, together with two packages of papers connected therewith, and signed by J. M. Wainwright, Assistant Secretary of War, relative to contract No. 2250 and supplements thereto, between the Government and the Wright-Martin Aircraft Corporation.

Your statement is noted that after a thorough investigation of the Air Service section of the War Department Claims Board, and after extended hearings at which the claim-

ant was present and introduced evidence, it was found by the Air Service section that instead of the Government being indebted to the Wright-Martin Corporation, that corporation has been overpaid in the net sum of \$3,601,715.75, and that the War Department concurred in the finding of the board.

Your statement is also noted that there are additional and voluminous files of the Air Service section of the War Department Claims Board relative to this contract now in the files of the War Department, some of which may prove of value in case of litigation, but that you believe the attached papers contain all of the necessary information to enable us to take action in the matter.

In accordance with your request, we have, therefore, forwarded the papers to the United States attorney at New York City with instructions that he make a careful investigation of this case and take such action against the Wright-Martin Aircraft Corporation as, in his opinion, may be necessary to cover the amount of the claim in question.

In view of the voluminous records in this case, we deem it advisable that you send a representative of the Air Service section to the office of the United States Attorney for the purpose of conferring with him relative to the matter.

Respectfully,

ROBERT H. LOVETT,  
*Assistant Attorney General,  
For the Attorney General.*

After this case had been placed in the hands of the United States attorney in New York for action, Charles Hayden——

Mr. JEFFERIS. Just a minute. That is signed by Robert H. Lovett, is it?

Mr. WOODRUFF. Yes; for the Attorney General.

After this case had been placed in the hands of the United States attorney in New York for action, Charles Hayden, who was not an officer of the Government, but an officer of the Wright-Martin Aircraft Corporation, took the matter up with the Hon. John W. Weeks, Secretary of War, who in turn referred the letter of Charles Hayden to the Hon. J. M. Wainwright, the Assistant Secretary of War, who replied to the Secretary of War by memorandum dated November 21, 1922, in which the Secretary of War was informed, in effect, that, in view of the extensive investigations in the War Department covering a period of two years, nothing could be gained by administrative action; that the case had gone through all the processes of review and appeal in the War Department, and that only a court which possessed full power to render a final decision and enforce it could satisfactorily cope with the situation which had arisen; and the Secretary of War was further informed that the case was in the hands of the Department of Justice and had passed beyond the control and jurisdiction of the War Department. A copy of this memorandum from Hon. John M. Wainwright, Assistant Secretary of War, to the Secretary of War, dated November 21, 1921, is as follows:

Mr. BOIES. Just a moment. Is that which you have just read your preparation?

Mr. WOODRUFF. It is.

Mr. BOIES. Do you not introduce the document that proves those things?

Mr. WOODRUFF. I am just about to read. If the gentleman is listening he will find I am producing evidence.

Mr. BOIES. I think the evidence ought to be produced instead of your statement of what it contains.

Mr. WOODRUFF. Would the gentleman preclude me from making a short statement of what any document I am producing would show to the committee?

Mr. BOIES. I do not think it is proper, for you to read into the record the written statement you have just prepared.

Mr. WOODRUFF. Would the gentleman think it proper if I stood on my feet here, and without notes on the matter, stated to the committee what I have already stated from this memorandum?

Mr. BOIES. I think that if you have a document or letter or any other paper, when you hand it up and state what it is, that it is a letter from some one to some one, and read it into the record, you have submitted the legitimate evidence that that document contains.

Mr. WOODRUFF. Well, I think the chair will bear me out that I am quite well within my rights in this matter.

The CHAIRMAN. If you would keep within the rules, I think you should, with a statement as to what they are, simply put the documents into the record.

Mr. JEFFERIS. It is going in, but I can not see where it is material, so far, to any issue in this matter.

Mr. GOODYKOONTZ. Of course, it is explanatory, though it is simply taking up time.

Mr. MICHENER. I take it, Mr. Woodruff, that it is the purpose to connect and bring home this knowledge to the Attorney General.

Mr. MICHENER. I mean this action of his subordinate.

Mr. WOODRUFF. Yes. Mr. Chairman, I will say that in my speech of April 11 I incorporated a copy of that memorandum, and in order to expedite matters, if the committee will permit, I will read the memorandum from my speech, subject to correction—the memorandum from the Assistant Secretary of War to the Secretary of War relative to this.

Mr. HERSEY. Does the Attorney General admit it is a correct copy of the original?

Mr. WOODRUFF. I said, to be subject to correction when they find it.

Mr. HOWLAND. We will raise no objection as to the accuracy of it. It is a correct copy, intentionally.

Mr. JEFFERIS. How about the materiality?

Mr. HOWLAND. I do not make any statement about that.

Mr. WOODRUFF (reading):

WASHINGTON, D. C., November 21, 1921.

Memorandum for the Secretary of War.

With reference to the attached letter from Mr. Charles Hayden in connection with the final settlement of the Wright-Martin Aircraft Corporation's contracts 2250 and its supplements 2250-1, 2250-2, 2250-3, 2250-4, 2250-5, 2250-6, and 2250-7 for the manufacture of 5,798 Hispano-Suiza motors and spare parts, involving the expenditure of \$36,101,752.08, will state that these contracts were given a complete audit by accountants of the Air Service under the terms of contract 2250 and supplements. Claim was then placed before the Air Service section, War Department Claims Board, for action. The contractor was given every opportunity to appear before the section on June 24, 25, 26, and 27, 1921, and gave oral testimony in support of their claim, and a further hearing was granted on August 15, 1921, whereon the contractor submitted further oral testimony and placed in evidence a great many exhibits. The audit and investigation of these contracts covered a period of about two years.

Under date of October 14, 1921, the contractor requested an appeal. The request was brought to my personal attention. In view of the extensive investigations, covering a period of two years, I felt that nothing more could be gained by administrative action. The contractor and the Government were wide apart in their conclusions to the contractor's liability. Under such circumstances it seemed to me that only a court which possessed full powers to render a final decision and enforce it can satisfactorily cope with such a situation. For this reason I directed the vice chairman War Department claims board, to deny the appeal. This action was taken. It may be remarked that this action is quite similar to that of the Dayton Wright

Airplane Co., in which the conclusion was reached by the Air Service section, War Department claims board, that instead of the Government being indebted to the claimant the claimant was indebted to the Government in the sum of \$2,550.30. In that case, by my direction, the record was transmitted to the Department of Justice, requesting that action be taken to protect the Government's interests. I am advised that suit is about to be instituted in the Government's behalf.

On October 26, 1921, the file in the case of the Wright-Martin Aircraft Corporation was forwarded to the Department of Justice, requesting that litigation be instituted to protect the interests of the United States. The Attorney General advises me that the papers have been referred to the United States attorney, New York City, for action. Officials of the Air Service will probably proceed to New York City in a few days to advise the United States attorney in this matter.

It will be noted that the case is now in the hands of the Department of Justice, which is engaged in the necessary investigation to determine the course of litigation. In view of this state of affairs the case has passed beyond the control and jurisdiction of the War Department.

I feel very strongly that the viewpoint of the contractor having been presented to the Air Service section by its principal officials and by its counsel at a number of meetings and in many papers, that the contractor's viewpoint is thoroughly understood by the department.

J. M. WAINWRIGHT.  
*The Assistant Secretary of War.*

Mr. JEFFERIS. What you have just read, as I understand, is a memorandum from the Assistant Secretary of War, to the Secretary of War?

Mr. WOODRUFF. Yes; it is in the file of the Department of Justice.

Mr. JEFFERIS. I understand that.

Mr. WOODRUFF. Now, Mr. Chairman, I think it is pertinent to this inquiry that the committee be permitted to know the contents of the Hayden letter. If there are any influences working within or without the Government to hold up prosecution of any suit in which the Government is interested, I think the committee in Congress should have that information.

Mr. HERSEY. What is the Hayden letter?

Mr. WOODRUFF. It is a letter written by Mr. Charles Hayden, of the firm of Hayden & Stone, a man who was director of the Wright-Martin Aircraft Co., and who has written to the Secretary of War in regard to this case.

Mr. HERSEY. How can that have any bearing at all on this matter?

Mr. FOSTER. Was it brought to the attention of the Attorney General, Mr. Woodruff?

Mr. WOODRUFF. That letter?

Mr. FOSTER. Yes.

Mr. WOODRUFF. I did not find it in the files. I found this memorandum in the files.

Mr. FOSTER. I referred to the letter you have in mind.

Mr. HERSEY. It would be in the files of the War Department, would it not?

Mr. WOODRUFF. I think so; and I would request, if the committee would indulge me to that extent, that that letter be secured and introduced as a part of this record.

The CHAIRMAN. Is this competent, as against the Attorney General?

Mr. FOSTER. Does the file of the Attorney General disclose that his attention at any time was brought to this Hayden letter?

Mr. WOODRUFF. Only indirectly through the Wainwright memorandum. I would not insist that that was absolutely necessary.

Mr. SUMNERS. Is there any memorandum in the Attorney General's files containing a reference to this letter to which you now refer?

Mr. WOODRUFF. I think so—I do not know that there is to the letter itself. There is reference, of course, to the memorandum which was forwarded to the Department of Justice.

The CHAIRMAN. Is that the one you have read?

(No response.)

Mr. MONTAGUE. I understand he does not insist upon that letter, Mr. Chairman.

Mr. WOODRUFF. I would insist upon it, Mr. Chairman; but, of course, the committee will do as it pleases in the premises.

The CHAIRMAN. Can you suggest how it has any bearing upon this case? If so, I will be very glad to consider it and so will the committee, to determine whether it should be admitted. Being simply filed in the Secretary of War's office, I can not see how you can insist that that has any bearing upon a charge against the Attorney General.

Mr. SUMNERS. I suggest that the letter be submitted to the committee in order that the committee may determine that matter.

The CHAIRMAN. I am inclined to think that that is the best way.

Mr. WOODRUFF. Would the chairman permit me to examine the letter in question also?

Mr. BIRD. Mr. Chairman, I do not see how, unless there is some showing that it went to the dereliction of the Attorney General, that this would be pertinent at all. Why should we want to see something that is in the War Department, unless it has been brought to the attention of the Attorney General and has some bearing on the delay of the proceedings of the Attorney General?

Mr. SUMNERS. I desire to examine the letter. I understand this is a committee examining the facts, and I presume the committee would not be prejudiced by reference of the letter.

Mr. BIRD. Not at all.

Mr. SUMNERS. My suggestion is that it might indicate some lines of inquiry.

Mr. BIRD. In the absence of its having come in contact with the office of the Attorney General at all?

Mr. SUMNERS. Why, of course.

Mr. CHANDLER. That is going too far afield, Mr. Chairman.

Mr. CHRISTOPHERSON. Bear in mind that the gentleman has just read the letter from the War Department indicating that the case had gone out of their hands and to the Attorney General, and that they could not withdraw or make any adjustment. It seems to me that refutes the very confession you are making that there was any——

Mr. WOODRUFF (interposing). I would like the committee to rule upon that point.

Mr. FOSTER. Before the committee reaches a conclusion, I would like to ask Mr. Woodruff this question: He has gone through this matter, bear in mind that we are investigating charges of impeachment against the Attorney General and further bear in mind he has no knowledge that this ever directly or indirectly was brought to the attention of the Attorney General. In view of those two statements,



do you insist that we consider it in this investigation of the Attorney General?

Mr. WOODRUFF. I will say this, for the benefit of the gentleman, that I do not know what was in the letter. I further do not know what conversations, if any, took place between the Attorney General and the Secretary of War, as a result of what was in that letter.

Mr. FOSTER. In view of the fact that this seems to be a move not to take testimony, but merely a fishing expedition, on the theory that it is competent——

Mr. CHANDLER (interposing). Sometimes you do not catch any fish.

Mr. SUMNERS. It depends on what kind of bait you use.

Mr. BIRD. Unless there is some foundation laid for its admission, I object to it.

Mr. WOODRUFF. I will ask the Chair to rule.

The CHAIRMAN. It is incompetent—I do not think there is any doubt about that, unless some foundation is laid.

Mr. WOODRUFF. I hope the chairman will believe my insistence upon the letter being produced is with the belief that it may throw some light upon this situation.

Mr. CHAIRMAN. It would not be competent unless you present some evidence to make it competent.

Mr. WOODRUFF. I should think that the statements of Mr. Wainwright in his memorandum would be sufficient.

Mr. JEFFERIS. That was to the Secretary of War.

Mr. WOODRUFF. But also incorporated in the files of the Department of Justice.

Mr. JEFFERIS. Mr. Woodruff, do you maintain that the Attorney General personally had knowledge and read everything in the files of the Department of Justice?

Mr. WOODRUFF. I maintain this, that naturally it would be utterly physically impossible for the Attorney General to read every document in the files of the Department of Justice. I do know that, of course; any one would know that.

Mr. FOSTER. Do you claim that this letter was in the files of the Department of Justice?

Mr. WOODRUFF. I do not.

Mr. HERSEY. It was never filed in the Department of Justice.

Mr. BIRD. Your contention seems to be that there was something in some letter that brought pressure upon the Attorney General in some way to delay or defeat the ends of justice. Do you claim that this is the letter to the War Department by which it was brought to the attention of the Attorney General? How could that be possible?

Mr. WOODRUFF. I made the statement that it was not brought to the attention of the Attorney General, and I think if the letter were produced before the committee it might throw some light upon this situation.

Mr. MONTAGUE. Do you claim that it would throw any light upon the charges against the Attorney General that he is guilty of high crimes and misdemeanors, and that it was brought to the attention of the Attorney General so that he knew of it?

Mr. WOODRUFF. It might. I should not say that he knew of them. I have no information that he knew of them.

Mr. MONTAGUE. I understood you to say that he did. I understood you, Mr. Woodruff, to say that you knew it was brought to his knowledge.

Mr. WOODRUFF. I beg your pardon.

Mr. MONTAGUE. I understood you to say that you knew that it was brought to his attention, and that is the reason that I asked the question.

Mr. WOODRUFF. I made no such statement. I do not know whether it was brought to his knowledge or not.

Mr. JEFFERIS. Mr. Woodruff, I want to ask you a question.

Mr. WOODRUFF. I did say this, that I did not believe that it was brought to his knowledge through correspondence, because we found nothing in the files indicating that it was, but I have no knowledge that it was not brought to his knowledge. I can not say that it was.

Mr. GRAHAM. You have no knowledge that it was?

Mr. WOODRUFF. I have not, I will state, gentlemen; but I will also add further we produced some letters that might throw some light on the question.

Mr. SEYMOUR. May I make one suggestion, and that is, that yesterday afternoon we submitted all of the facts relating to the Wright-Martin Aircraft matter to these gentlemen, and advised them through the attorney who has charge of the preparation of the cases that a petition is now being prepared, to be filed immediately, for the recovery of the total amount claimed.

The question, therefore, is, Do the gentlemen now appearing question the good faith of the lawyers who are preparing that petition?

It does not make any difference what the efforts were to block this case in the past, the question is, Is there any doubt in the minds of anyone as to the good faith of the department in the preparation of this case for trial?

Mr. GRAHAM. Had preparations of this case begun——

Mr. SEYMOUR (interposing). It has been in the department through another audit. The audit came back, which is a thing that I hesitated to say.

Mr. WOODRUFF. I wish to say, before the gentleman resumes, that I feel that I should be given an opportunity to answer the question just submitted.

The CHAIRMAN. You will be.

Mr. GRAHAM. Do you have something more, Mr. Seymour?

Mr. JEFFERIS. I want to ask Mr. Woodruff a question.

Mr. WOODRUFF. Permit the gentleman to continue his remarks.

Mr. CHANDLER. What do you mean by "beginning these cases"? I want to know when they began preparation.

Mr. SEYMOUR. The case has been in the war claims department, entirely separated from the office with which I have connections, The gentlemen in that division have had the case since that division was organized last June.

Mr. CHANDLER. And you did not feel justified in instituting a legal suit until the claim had been gone into; is that the idea?

Mr. SEYMOUR. And there is a great difference of opinion between lawyers in the department. They have had this case up and given it very careful consideration, and in November finally decided that the suit should be brought.

Mr. BOIES. Of what year?

Mr. SEYMOUR. This year; and the case is being prepared to file now.

Mr. WOODRUFF. No; in response to the gentleman, Mr. Chairman, I want to say this, in fairness to myself, in fairness to the Attorney General, and in fairness to the gentlemen who are now handling the war-frauds cases in the Department of Justice, who are now handling that division of it.

I have no criticism to make at this time of any man connected with that bureau of investigation or that particular bureau in the war frauds section. It is composed of men of high standing. I believe that they are carrying on these cases at this time with the greatest expedition possible, but my criticism of the Attorney General does not date particularly from the date of the organization of this bureau, but my criticism goes back of that—almost a year and a half prior to the time this organization was perfected—and I want to show, and I propose to show, if the committee will permit, that the Wright-Martin case, the facts in the case, that the department was thoroughly conversant with them, the Department of Justice, a year ago, and that they were passed on finally by Colonel Goff—I believe that he is here this morning. I had the pleasure of meeting him here for the first time. I did say that that case had not been taken into court; that it has been over a year, and that the case has not been taken into court yet, and I want to show this morning, and I think that at the present time——

Mr. MONTAGUE (interposing). Of course, you are arguing that there has been a commission of delay?

Mr. WOODRUFF. I am arguing commissions of delay on the war fraud cases. I am arguing that there never was anything done substantially until last summer——

Mr. GRAHAM (interposing). Now, with regard to the question of that letter, under this letter, the letter itself would not be competent, being hearsay. You would have to connect it up, so as to make it of any value whatever, would be, if it were to be shown here that it was read by the Attorney General. That is what you are charging him with?

Mr. HERSEY. But, according to the files of the Attorney General it has never been there.

Mr. WOODRUFF. No; it is not in the files of the Attorney General. We did not find it in the files.

Mr. SUMNERS. Not knowing the nature of the letter in question—I want it thoroughly understood that I do not suggest that it go in the record—I would suggest that in view of the observations made by the gentleman who is now addressing the committee it might aid this committee in the investigation of these particular charges if the committee itself examined the letter and determined after examination of the letter whether or not that letter would in turn suggest inquiries that might throw light on these particular charges.

Mr. WOODRUFF. The thought in my mind, Mr. Chairman, I will say, is that there might have been a suggestion in that letter, and perhaps was, that the Secretary of War took the matter up with the Attorney General. If there is no such indication in the letter, I would not ask for it to be put in the record.

Mr. MONTAGUE. May I ask a                      Suppose——

Mr. WOODRUFF (continuing). If that was contained, I think that it should be put in.

Mr. MONTAGUE. Let me ask, suppose that the Attorney General is not shown to have seen this letter——

Mr. HERSEY (interposing). How, in view of that, would you impeach the Attorney General for high crimes and misdemeanors as the result of the failure of the Secretary of War?

Mr. WOODRUFF. Inasmuch as the Secretary of War has indicated to me that his relations with Mr. Charles Hayden have been of somewhat a friendly nature, I do not believe that he would neglect carrying out suggestions of that kind.

Mr. GOODYKOONTZ. Do you think that we ought to hold the Attorney General liable for acts of the Secretary of War?

Mr. WOODRUFF. I do not.

Mr. HERSEY. If you are going to testify, you ought to be sworn.

Mr. WOODRUFF. I will say—did you care to ask me some questions?

Mr. JEFFERIS. I did; yes. I want to know whether it is your contention that the Attorney General is to be considered as having actual personal knowledge of everything that is filed in the Department of Justice?

Mr. HERSEY. But it was never filed in the Department of Justice.

Mr. MICHENER. This was not filed in the Department of Justice.

Mr. JEFFERIS. Let me ask a question.

Mr. WOODRUFF. I will say that while the Attorney General does not have actual personal knowledge of everything in his department, that under the law he is responsible for the conditions which exist in his department.

Mr. JEFFERIS. That does not answer my question.

Mr. WOODRUFF. I have already stated to the committee that certainly the Attorney General could not have personal knowledge of everything in his department, as it would be a physical impossibility for him to give the time necessary to have personal knowledge of every little detail, of every case, appearing before the Department of Justice.

Mr. JEFFERIS. Do you contend that when he has referred the matter to someone else in the Department of Justice that he has personal knowledge that the one to whom he has referred the matter has properly handled it?

Mr. WOODRUFF. I did not so state.

Mr. JEFFERIS. Would you contend that high officials should be impeached on constructive knowledge as to what might be in their files?

The CHAIRMAN. I want to say this, that that is not what we are called on to do. What we are called upon to do is to determine whether or not the Attorney General has knowingly or willfully done some wrongful act for which he should be impeached.

Mr. JEFFERIS. This letter that you are introducing here apparently was written by Mr. Lovett—I do not know who he is—in the Department of Justice. Do you contend that it was written by the Attorney General and not by Mr. Lovett?

Mr. WOODRUFF. I will say, and I think that the gentleman will agree with me, that if the Attorney General had written the letter it would be entirely to his credit. I am not criticizing it. I will say

this to the committee, that up to the time that I closed my case—I will say that the Department of Justice, through the subordinates down there, were operating as the Department of Justice should operate; but I am calling the attention of the committee to the fact that this case has been ready for trial for a year or more, and is not yet in the court.

Mr. CHANDLER. I submit that this was neither actual nor constructive, as it was not even on file, and I submit that it is wholly incompetent.

Mr. WOODRUFF. I want to suggest, also, Mr. Chairman, if I am permitted to continue, I will produce documents.

The CHAIRMAN. Go on and introduce your documents.

Mr. BOIES. Mr. Woodruff, you have stated this morning and before you were here at the invitation of the committee.

Mr. WOODRUFF. Yes.

Mr. BOIES. Did you not write a letter to this committee asking that you be permitted to come before it?

Mr. WOODRUFF. I asked the chairman to be permitted to present certain evidence to the committee, matters that I deemed advisable, and I will say to the gentleman, however, that I did not expect, until I received the chairman's letter, to appear before the committee.

Mr. HERSEY. Mr. Woodruff, I would like to suggest to you—you say that you are not a lawyer, and of course that may account for my suggestion to you—that in offering evidence in a case like this and in making a statement with reference to the Attorney General, that if the case was being brought in court, or it was an action being brought in court, that you ought to exercise as much care as possible and not ask the defendant to produce from their files matters that might be used by the defendant in this case.

Mr. WOODRUFF. I am sure that the Attorney General's attorneys will assure the committee that I am not proposing to introduce anywhere, in any way, anything that will embarrass them, any documents in any way that will embarrass them. I think that that is true.

Mr. HOWLAND. That is understood.

Mr. WOODRUFF. I want to make that quite plain to the committee, and that is the reason that I am asking for certain documents.

Mr. THOMAS. Mr. Chairman, why not have the Secretary of War summoned here and find out from him whether or not the Attorney General's attention was ever called to this. I do not think that we ought to go all around the house, in order to get in at the back door, but that we ought to find out.

The CHAIRMAN. That is a matter that we can cover later on. Go on with your evidence, now.

Mr. JEFFERIS. Mr. Woodruff, have you been engaged in the practice of law in the past?

Mr. WOODRUFF. I beg your pardon.

Mr. JEFFERIS. Have you been engaged in the practice of law in the past?

Mr. WOODRUFF. I am not a lawyer.

Mr. JEFFERIS. What was your business?

Mr. WOODRUFF. I was a dentist by profession.

Mr. FOSTER. While Mr. Woodruff is looking for the letter, I will say that I agree with the gentleman from Texas (Mr. Sumners) with regard to inspecting the letter to see the competency but—



Mr. MICHENER (interposing). I think that Mr. Thomas is about right.

Mr. THOMAS. The chairman does not think so.

The CHAIRMAN. I ruled some time ago that the letter could be secured for examination. I do not think that it is competent, but the witness desires it to go in.

Mr. THOMAS. I ask that the Secretary of War be summoned, and see if we can connect it up with the Attorney General in any way. We could ask him about this matter.

Mr. GRAHAM. Do you want to call him before the committee now, make the committee wait for the Secretary of War, or hear him some other day?

Mr. THOMAS. Why, certainly, we can have him here on another day.

The CHAIRMAN. It has been my ruling that this letter could be brought in so the committee may examine it. If you have any competent testimony, offer it now.

Mr. WOODRUFF. I am getting that.

The CHAIRMAN. You can offer it, even though you have not laid any foundation for it.

Mr. THOMAS. I want to see the Secretary of War here, and we could ask him about his knowledge as to whether it was brought to the attention of the Department of Justice.

Mr. FOSTER. In other words, if Mr. Woodruff can not develop the facts, we should try to get them from the Secretary of War?

Mr. THOMAS. We could find out what he knows about it.

Mr. BOIES. You think that we should go fishing to find out whether there was anything in the letter that we want to inquire about?

Mr. THOMAS. He can bring the letter in here, and we can let him read it, and it can be read by the committee.

Mr. HERSEY. There is no occasion for this testimony.

The CHAIRMAN. Mr. Woodruff, have you anything further?

Mr. WOODRUFF. Wait just a minute. I am just looking up another document. Now, Mr. Chairman, we have disclosed the fact that a year ago this case was sent to the district attorney at New York for trial. I am about to read a letter written by Colonel Goff, showing that after that had been done, the case had been called——

Mr. HERSEY (interposing). After what had been done?

Mr. WOODRUFF. I beg your pardon.

Mr. HERSEY. After what had been done?

Mr. WOODRUFF. After this case had been sent to the district attorney at New York for necessary legal action, the case had been recalled to Washington, and the Wright-Martin people given a further hearing, and that after that hearing the First Assistant Attorney General directed that the case proceed. The letter is:

JANUARY 21, 1922.

HON. WILLIAM WALLACE, Jr.,

*Care of Chadbourne, Babbitt & Wallace,*

*Attorneys for the Wright-Martin Aircraft Corporation, New York City.*

MY DEAR MR. WALLACE: Referring to your letter of December 9, 1921, in which you very kindly inclosed a memorandum presenting in consequential order your views on the chief points orally argued at the hearing before me on December 7, 1921, concerning the final adjustment under Wright-Martin cost-plus contracts of the 2250 series, I wish

to say that your oral argument and also the points and authorities stated in your memorandum have had very careful attention.

After thorough consideration I have to inform you that in the opinion of the Attorney General the case is one in which it is necessary to institute litigation to protect the interest of the Government.

Sincerely yours,

*Assistant to the Attorney General.*

Mr. FOSTER. That was written in January?

Mr. WOODRUFF. January 21.

Mr. HERSEY. January, 1922?

Mr. WOODRUFF. January 21, and it referred to a hearing held by Colonel Goff.

Mr. HERSEY. Was that in 1921 or 1922?

Mr. WOODRUFF. 1922.

Mr. BOIES. What is the date of the letter?

Mr. HOWLAND. What does the record show?

Mr. HERSEY. The letter should be given to the reporter.

Mr. YATES. That is offered in evidence?

Mr. WOODRUFF. Certainly, this document is offered in evidence.

Mr. YATES. The document is offered as evidence by you?

Mr. WOODRUFF. Yes, sir.

The CHAIRMAN. He is offering documentary evidence. That is the reason that I have not asked him to be sworn.

Mr. WOODRUFF. As stated to the committee, I have no knowledge other than knowledge that comes through documents, and through men who I will produce when the time comes.

Now, Mr. Chairman, according to the Government audit, the hearings and findings of the War Department Claims Board, repeatedly sustained in the War Department and affirmed in the hearings before Colonel Goff, assistant to the Attorney General, on December 7, 1921, this case is one alleging a series of the grossest wrongs——

Mr. HOWELL (interposing). Is this by way of argument?

Mr. WOODRUFF. No; this is not.

Mr. HOWELL. Is it a statement of fact?

Mr. GOODYKOONTZ. Mr. Chairman, I suggest in connection with this that we are capable of understanding the tenor and effect of an ordinary letter and I object to the reading of that statement.

Mr. HERSEY. Yes; I object to the character of the statement.

Mr. MICHENER. I think that the gentlemen will not insist on that.

Mr. WOODRUFF. I will say this, and I think that the attorneys for the Government in this particular case will substantiate that statement——

Mr. MICHENER (interposing). Just a minute. I do not think that Mr. Woodruff will insist on that, because that is a mere conclusion, unless you want to——

Mr. WOODRUFF (interposing). No; it is not merely a conclusion. It regards things pertaining to the——

Mr. GOODYKOONTZ (interposing). I object to it now.

Mr. MICHENER. You appreciate that you are just to put in the facts as they are shown in the documents and that you are not to draw any conclusions.

Mr. WOODRUFF. Yes.

Mr. MICHENER. This summary is a conclusion, whether it is your own, or someone else's?

Mr. WOODRUFF. I will say this: I think Mr. Howland here if he were familiar with the conditions that exists with regard to the Wright-Martin case would concede that there were gross wrongs——

Mr. MICHENER (interposing). That is all the more reason why they are not admissible.

Mr. WOODRUFF. Well, I do not know whether——

The CHAIRMAN (interposing). "Gross wrongs" is commenting; you are commenting on the Wright-Martin contract; you mean the Wright-Martin people?

Mr. WOODRUFF. Yes, indeed.

The CHAIRMAN. Not the conduct of the case?

Mr. WOODRUFF. No, indeed.

Mr. YATES. It does not make any difference. Here is the proposition: This gentleman says that he is offering evidence now, documentary evidence, and he introduces his conclusions characterizing something as gross wrongs. I certainly do not desire to interrupt the witness, and do not desire to be captious, but I object to these conclusions being interpolated between the documentary evidence.

Mr. BIRD. It has been suggested here, and stated that suit is about to be instigated, which is equivalent to a statement that goes to show that action does exist. Now, if a cause of action exists, why is it pertinent here to go into what the Wright-Martin people have done?

Mr. WOODRUFF. Inasmuch as the committee is fully aware that I am not an attorney, I think then it is barely possible that a legal interpretation would state that it was not pertinent.

Mr. FOSTER. You are complaining of delay?

Mr. WOODRUFF. I am complaining of delays.

Mr. FOSTER. The point that I make, Mr. Chairman, is that while Mr. Woodruff is standing here I notice that his attorney is indicating these different sections for him to read between the pieces of documentary evidence as he presents them. Now, I suggest that he is an attorney, and is perfectly conscious of the law, while Mr. Woodruff, perhaps is not. The attorney is pointing out to him, evidently, what he thinks should be read. I have no complaint to make of Mr. Woodruff. I have no doubt that he is here in good faith trying to connect these pieces of evidence—but his attorney fully understands, as he is presenting them to him, that it is incompetent for him to make a summary of the letter. That is my point.

Mr. MICHENER. Absolutely.

Mr. WOODRUFF. Mr. Chairman, I think I have fully disclosed to the committee that the case of the Wright-Martin Co. was ready for presentation to the courts more than a year ago. I have further stated that I had no criticism at this time to offer of the war fraud section of the Department of Justice. I believe that since that department has been organized they have been doing everything they could do. I have no information which would indicate anything other than that, but I have a very serious criticism to offer of the Attorney General on account of his inactivity in these very things prior to the time this department was organized in the Department of Justice.

Mr. CHRISTOPHERSON. Do you think that he could have handled all of these cases with the personnel in the department at that time?

Mr. WOODRUFF. I do not. And I will say to the gentlemen that in the speech I made on the floor of the House I called attention to the fact that these matters were of such grave importance and that they were piling up in such numbers that certainly they never could be handled unless a separate division were organized in the Department of Justice for that purpose.

Mr. BOIES. What are you complaining about there then?

Mr. CHRISTOPHERSON. What was your complaint then?

Mr. WOODRUFF. My complaint is that the Attorney General never did come to Congress and ask for further funds.

Mr. CHRISTOPHERSON. Well, did Congress go to him?

Mr. WOODRUFF. I beg your pardon.

Mr. CHRISTOPHERSON. Wasn't it as much the duty of Congress to go to him as it was for him to come here and lobby for an increase in appropriation?

Mr. WOODRUFF. Now, you gentlemen know very well that Congress does not say to any department, the Department of Justice or any other department, after they have asked Congress for their appropriation, "Here is another million. You have not asked for enough."

Mr. CHRISTOPHERSON. Should they not do that?

Mr. WOODRUFF. You know that that is not the procedure in Congress.

Mr. CHRISTOPHERSON. Did you appear before the Appropriations Committee and ask for an additional allowance?

Mr. WOODRUFF. I beg your pardon.

Mr. CHRISTOPHERSON. I say, did you appear before the Appropriations Committee and ask for an additional allowance for the Attorney General?

Mr. WOODRUFF. I did not. I will say to my friend from South Dakota, however, I think on April 7, this year, I attempted to insert into the appropriations bill an appropriation of \$500,000 for this very purpose, and the chairman of that committee arose and said that the Department of Justice had all of the money that they wanted for this purpose to carry on the work, and that they did not need any more money.

Mr. FOSTER. And, within two weeks, the Attorney General did ask for this \$500,000.

Mr. WOODRUFF. Within a week, I think, we had a request from him.

Mr. FOSTER. You were here yesterday when our colleague, Mr. Johnson, made his statement?

Mr. WOODRUFF. Yes.

Mr. FOSTER. You subscribe to his views, I take it, that prior to the appropriation of that \$500,000, the number of competent attorneys in the Attorney General's office was not large enough to carry on the work. That is true?

Mr. WOODRUFF. Absolutely.

Mr. FOSTER. That the Attorney General did not have sufficient personnel to deal with these cases prior to that time?

Mr. WOODRUFF. Yes; but the Attorney General should have come to Congress, if he did not have; he should have come to Congress when the very first appropriation bill was before the House and even before that date, and demanded of Congress funds with which to carry on the work.

The CHAIRMAN. All of this is entirely incompetent, because we are not taking the testimony of the witness. He is presenting documentary evidence.

Mr. JEFFERIS. Well, the witness complains that the Attorney General did not recommend to Congress an additional appropriation.

Mr. BOIES. That is what you think he should have done?

Mr. WOODRUFF. Absolutely. That was his duty as Attorney General.

The CHAIRMAN. Do you have any other documents?

Mr. WOODRUFF. I have offered all of the documents with regard to the Wright-Martin case. The documents are very clear.

Mr. GRAHAM. Comments have been ruled out, so please omit them.

Mr. FOSTER. In order for you to testify, you should be put under oath and testify to what you know rather than commenting on these documents.

Mr. MICHENER. That is, you can be put under oath and testify.

Mr. WOODRUFF. Then, gentlemen, I will read the documents. The documents speak for themselves.

Mr. YATES. I am not objecting to the documents, I am objecting to the comments that you are making.

Mr. WOODRUFF. The documents seem to me to be very clear, and they seem to establish the fact that this case was ready for trial——

Mr. YATES. That is the very point that I am objecting to.

Mr. WOODRUFF. And upon that I am willing to rest.

Mr. YATES. We do not care to have this gentleman say what he thinks of the documents at all.

Mr. WOODRUFF. Well, if the gentlemen will read them, they can come to no other conclusion than to the one that I have arrived at.

The CHAIRMAN. Let me ask you, what conclusion have you arrived at?

Mr. WOODRUFF. I have arrived at this conclusion, Mr. Chairman, that the Attorney General has been grossly negligent in the face of——

Mr. CHRISTOPHERSON (interposing). Because he did not come up to Congress and ask for more money?

Mr. WOODRUFF. Yes, sir; that is perfectly correct.

Mr. CHRISTOPHERSON. You think that he is guilty of high crimes and misdemeanors because he did not come to Congress and ask for money?

Mr. WOODRUFF. Under the circumstances I would so interpret it, if the gentleman wants my opinion about it. [Laughter.]

Mr. CHANDLER. And that we really ought to impeach a man because he does not solicit funds?

Mr. WOODRUFF. Now, Mr. Chairman, I am handing you a list of witnesses who have knowledge of these facts.

The CHAIRMAN. Of what?

Mr. WOODRUFF. Of the facts we have set forth here that are contained in these documents.

Mr. HERSEY. Do they prove anything outside of what is contained in the documents themselves?

Mr. WOODRUFF. I think not.

Mr. MONTAGUE. There is no dispute about the documents.

Mr. WOODRUFF. Very well.

Mr. JEFFERIS. Now, Mr. Chairman, inasmuch as these documents have been received, I trust that they will be received under the theory



they are really under objection as being irrelevant, incompetent, and immaterial to any issue in these charges.

Mr. HERSEY. What we will do with them is for the committee to decide, I suppose.

Mr. SUMNERS. Mr. Woodruff, let me ask you a question that might throw some light on the duty of the committee in regard to the taking of further testimony. As I understand, your contention is that the War Department investigated this matter thoroughly?

Mr. WOODRUFF. Very thoroughly.

Mr. HERSEY. And reported to the Attorney General of the United States that, in its judgment, the facts showed that a large sum of money was due from this corporation to the Government?

Mr. WOODRUFF. Yes.

Mr. HERSEY. And based its judgment upon what purported to have been a thorough examination of the record?

Mr. WOODRUFF. Yes.

Mr. HERSEY. The Attorney General, in turn, submitted this report carrying with it the whole matter to one of his assistants, and on the 21st of January of this year the Assistant Attorney General having the matter in charge reported that, in his judgment, the claim of the Government was well founded and suit should be instituted.

Mr. WOODRUFF. Yes.

Mr. SUMNERS. The Attorney General at that time knowing that he was not properly equipped to proceed in the matter was still so content that he did not undertake to have himself and his office properly equipped to push these suits, and that it was not until after the matter was discussed in the House that the Attorney General indicated a desire to have himself so equipped?

Mr. WOODRUFF. Yes.

Mr. SUMNERS. And now we are advised by gentlemen representing the Attorney General that that department of the Government has come into agreement, first, with the War Department and, second, with the Assistant Attorney General, who gave his report on the 21st of January, 1922, and, in your judgment at least, those are the facts?

Mr. WOODRUFF. Yes.

Mr. SUMNERS (continuing). As you contend?

Mr. WOODRUFF. As shown by the documents I have read into the record.

Mr. SUMNERS. Yes. And no additional facts than those facts probably could be discovered by further pursuit of the matter and inquiry by this committee.

Mr. WOODRUFF. I stated earlier here to-day that I had no criticism to offer of the present bureau of the Department of Justice handling these cases, and I will say that includes the Wright-Martin case, and I do not want in any way to embarrass the prosecution by the bureau in the Wright-Martin case by asking that they introduce anything here that will in any way give comfort to the Wright-Martin Co., in that proceeding.

Mr. GRAHAM. Mr. Woodruff, would you kindly tell me the date when the case was referred to the district attorney in New York?

Mr. WOODRUFF. I think it must have been referred soon after—  
either before or after December 1st, I presume the records there  
would disclose it, but I have no particular date in mind.

Mr. GOODYKOONTZ. What was the date of the letter of the Attorney General transmitting the case to the district attorney in New York?

Mr. FOSTER. That was in December, and Mr. Goff's opinion was in November.

Mr. WOODRUFF. I think November 15.

Mr. FOSTER. What was the date of this appropriation for \$500,000?

Mr. WOODRUFF. Why, I think it was in May.

Mr. FOSTER. Do you know whether, as soon as the appropriation was granted, this department was built up?

Mr. WOODRUFF. I do know that it was; I know, also, that it was done very promptly.

Mr. FOSTER. So your main complaint would be from December until May?

Mr. WOODRUFF. My main complaint would be from the very day the Attorney General took his office until May, more than a year thereafter.

Mr. FOSTER. I suppose you mean by that from the time the information came to him?

Mr. WOODRUFF. I do.

Mr. FOSTER. As to what was in the War Department that had not been referred to him, you would have no complaint?

Mr. WOODRUFF. No. But let me make myself clear on that: My position is this, Mr. Chairman, that the scandals growing out of the war frauds were of common knowledge as a result of the investigations by various committees, one of the House, one of the Senate, and by Mr. Hughes's committee, and the Attorney General came into that great position following these investigations which had been made and knowledge of which had been spread all over the country on the first page of all the newspapers.

The CHAIRMAN. Of course, that is not competent.

Mr. WOODRUFF. I know, and I am not stating that. He has asked me what my criticism of the Attorney General is and that is what I am trying to give you.

Mr. GRAHAM. There has been no question of that kind.

Mr. WOODRUFF. My contention is that the Attorney General, in view of those facts, should have come before Congress and asked for funds to follow up the result of those investigations.

Mr. BIRD. But you do not mean to say it was because of any corruption on his part?

Mr. WOODRUFF. I am not saying that.

Mr. FOSTER. When did the Graham committee make its report?

Mr. WOODRUFF. The Graham committee made its report in the previous Congress.

Mr. JEFFERIS. It was just before the adjournment, in March, 1921?

Mr. WOODRUFF. I think so.

Mr. BOIES. Did you make any criticism of the two or three years these matters had laid dormant?

Mr. WOODRUFF. Oh, I will say to the gentleman if I had attempted to criticize, in epithets that a man would really be justified in using, the previous administration, the stenographer would find his pen would burn up in trying to take down my criticism of the previous administration in not taking up these cases.

Mr. BOIES. You have never criticized them on the floor of the House?

Mr. WOODRUFF. Oh, I beg to differ with you; I have criticized everybody that had anything to do with those things. I want to say to the gentleman my criticism of the previous administration of the Department of Justice was even more severe than it is of the present administration of that department.

Mr. GRAHAM. But the fact remains that as early as December, 1921, this case was referred to the district attorney in New York.

Mr. WOODRUFF. Yes, sir.

Mr. GRAHAM. With instructions to proceed?

Mr. WOODRUFF. Yes, sir.

The CHAIRMAN. How long was that after the report was made to the Department of Justice?

Mr. WOODRUFF. To my mind——

Mr. GRAHAM (interposing). Answer the question.

Mr. WOODRUFF. I did not know you were asking a question.

Mr. GRAHAM. He was asking what space intervened between the report of the War Department to the Attorney General and his reference of the case to the District Attorney in New York.

Mr. WOODRUFF. Oh, it was done very promptly.

Mr. GRAHAM. Very promptly?

Mr. WOODRUFF. Very promptly; yes.

Mr. GRAHAM. That is all.

Mr. WOODRUFF. Now, Mr. Chairman, I hope the committee will let me know at this time whether or not they will allow me to introduce evidence in cases other than those that have been cited in the various specifications.

Mr. HERSEY. You mean outside of the Keller charges?

Mr. WOODRUFF. Outside of the Keller charges; yes.

Mr. HERSEY. I think you had better proceed before the House on a matter of that kind. The committee have no power to go into anything beyond what is covered in these specifications.

The CHAIRMAN. Personally, I do not think the committee has the right to go into anything outside of the Keller charges.

Mr. JEFFERIS. I would suggest that you proceed to get evidence that would come within the realm of competency, relevancy, and materiality.

Mr. BOIES. If there are any other charges, the way is open to you to prefer them, as Mr. Keller has.

Mr. WOODRUFF. On the floor of the House?

Mr. BOIES. Yes.

Mr. WOODRUFF. I do not know——

Mr. SUMNERS. Irrespective of how we would pass on that, if that question is to be passed on, our authority is covered by the resolution that has been referred to this committee.

The CHAIRMAN. All I think the House has done in cases of this kind has been to ask for a detailed statement of what charges are covered by the original impeachment and my understanding is that, in those cases, they have followed the specifications of the party who has seen fit to file them as an explanation or amplification of his charges.

Mr. SUMNERS. This resolution, Mr. Chairman, is in the language of the Constitution.

The CHAIRMAN. The resolution covers everything under the sun.

Mr. SUMNERS. And that is the scope of our direction from the House.

Mr. GRAHAM. The resolution has not been adopted, though.

Mr. SUMNERS. No.

Mr. GRAHAM. It is only referred to us. It might, possibly, be reported negatively.

Mr. BOIES. This is our preliminary investigation to determine if there is proper cause.

Mr. WOODRUFF. I wish the committee would rule on that request I just made.

The CHAIRMAN. You mean in reference to new charges against the Attorney General?

Mr. WOODRUFF. Yes.

Mr. HERSEY. Outside of the Keller charges?

Mr. WOODRUFF. Yes.

Mr. GOODYKOONTZ. Of which he has had no notice whatever?

Mr. WOODRUFF. Of which he would have no notice.

Mr. GOODYKOONTZ. Yes.

Mr. BOIES. We could not answer that question until you preferred the charges themselves.

Mr. WOODRUFF. I want to say this, that it has been apparent to me and I think it has been in the minds of the members of the committee that they perhaps should confine themselves to the Keller charges.

Mr. GRAHAM. That is quite correct, as far as I am concerned.

Mr. WOODRUFF. I want to say I have no criticism to offer if that is the position the committee takes.

Mr. FOSTER. I think, instead of this question being before the committee, the real question is whether we will proceed with the specifications now before it. Evidently, Mr. Woodruff would not expect us to give an answer to the question he propounds in the midst of taking testimony on the real matter before us?

Mr. JEFFERIS. I think it is well settled in the law what is before us and that no other matters could be brought up here. We have had the specifications; they have been furnished to the Attorney General and his answers have been made and we are here on those, and it seems to me, first, that we should clean those up.

Mr. HERSEY. I would like to inquire, Mr. Woodruff, if it should occur to you you ought to prefer charges against the Attorney General on the floor of the House by impeachment proceedings, additional charges to these, and you should do so and they should be referred to this committee, whether or not you would refuse to furnish the information on those charges to the committee and refuse to give testimony?

Mr. WOODRUFF. That is a bridge, Mr. Chairman, I will cross when I reach it.

Mr. HERSEY. All right.

Mr. WOODRUFF. Now, Mr. Chairman, I was somewhat enlightened yesterday afternoon when I got down to the Department of Justice. I had made some criticism of the handling of the Mitsui Co. cases.

Mr. HERSEY. Is that under these charges?

Mr. WOODRUFF. Yes. I think that is No. 10, is it not?

Mr. HOWLAND. Yes.

Mr. WOODRUFF. It developed down there that the department auditing the Nitsui Co. contracts have, I understand, made two audits, or there was an audit made by each auditing section of the department——

Mr. SEYMOUR (interposing). I am not sure there were two audits made.

Mr. WOODRUFF. Two in the War Department, by different auditing sections, and I find there was a great discrepancy——

Mr. HERSEY. Now, wait a moment.

Mr. WOODRUFF. Will the gentleman permit me to complete my statement?

Mr. HERSEY. Mr. Chairman, I object to his stating what the War Department did or the Department of Justice did in this case, in the way of auditing.

Mr. WOODRUFF. I want to say to the gentleman——

Mr. HERSEY. Wait until I make my objection.

Mr. WOODRUFF. I want to say to the gentleman, in all fairness to the committee, I am now trying to give the Attorney General a clear bill of health on this particular charge.

Mr. HERSEY. By disclosing the result of an audit made by the department. I want to suggest you should not disclose to the committee what its audit has been in a pending case, which it is relying on as evidence to support the charge.

Mr. FOSTER. Perhaps he is going to tell us what he found.

Mr. HERSEY. The audits of the Attorney General are in the Department of Justice for its own use in the prosecution by the Attorney General of a case in court, and what those audits disclose or whether they disclose the defendant is guilty or not guilty should not be disclosed before this committee.

Mr. WOODRUFF. I am not going to disclose anything which would embarrass the department.

Mr. HERSEY. You said you were going to disclose the audits in this case.

Mr. WOODRUFF. No; I did not say anything about disclosing the audits. I simply said they have found two different audits were made showing a wide discrepancy and those have not been turned over to the Department of Justice up to this date, and, consequently, the Department of Justice could not act in the case.

Mr. FOSTER. If it is just his statement regarding one of the charges under subdivision No. 14 that he is here whitewashing, as he termed it, that statement does not do any harm.

Mr. WOODRUFF. Surely, the committee does not want to criticise me for being fair enough to come before the committee and stating the Department of Justice is not subject to criticism.

Mr. HERSEY. No; Mr. Woodruff, I want you to understand I am not criticizing you at all; I am simply suggesting to you as a man who is not an attorney that you ought not to disclose what you found in the audits of the department, which are the basis for bringing the suit against the defendant.

Mr. WOODRUFF. Yes; and I will be very glad to allow Mr. Howland, or any other gentleman representing the Attorney General here to state whether the statement I have just made in any way embarrasses the Attorney General's department. I simply wanted to speak in a spirit of fairness.



Mr. GRAHAM. Really the only point that is objected to, Mr. Woodruff, is this, that instead of saying what, if any, conflict there was between the two audits, if you had simply said you ascertained certain facts which made it apparent to you that the matter was not criticizable there could be no objection.

Mr. SUMNERS. If Mr. Woodruff, I suggest, is at present appearing here as an expert to determine what ought to be the conclusion of the committee with regard to these various charges, I can see very correctly why he ought to state his charges with reference to the case he has investigated; but I understand our relation to this inquiry is to find out these facts and to reach a conclusion ourselves as to what those facts show.

Mr. GOODYKOONTZ. I think his statement is pertinent. It goes to show how painstaking and careful the gentlemen who prepared these charges were in thus attacking the Attorney General of the United States—a Cabinet officer—for high crimes and misdemeanors.

Mr. SUMNERS. I say, if this gentleman can qualify as an expert; but, judging from his own words, I think that would be an assumption which he would not intend to convey.

Mr. BOIES. Would it not be better for the record to show, when you examined these papers, you had no criticism to make rather than to say you were attempting to whitewash the Attorney General?

Mr. WOODRUFF. I was going to ask the committee to permit me to withdraw that statement, because that would carry a wrong impression, which I did not intend, and, with the permission of the committee, I will ask that that portion of my remarks be stricken out.

Mr. BOIES. Because I do not think every one of the 21 members of this committee is carrying an independent whitewash bucket.

Mr. WOODRUFF. I hope the gentleman won't charge me with any such statement as that. I want to ask now, if the gentlemen care to go into it, about the cantonment contracts that are not mentioned in the bill of specifications, and does the committee rule there is nothing further that can be introduced on that at this time?

The CHAIRMAN. Is it your understanding the most of those cantonment matters have been sued anyway, is it not?

Mr. WOODRUFF. They have begun suit on them; yes.

Mr. JEFFERIS. Have you any fault to find with that?

Mr. WOODRUFF. Not with the starting of the suits; not in the slightest.

Mr. MICHENER. Mr. Woodruff, just one question along that line: Do you think that you would be warranted in arising on the floor of the House and impeaching the Attorney General for anything that might have happened in reference to those contracts?

Mr. WOODRUFF. I will say in answer to the gentleman that in April——

Mr. MICHENER. No; my purpose is——

Mr. WOODRUFF. I understand, and I am going to answer the gentleman if he will permit me.

Mr. MICHENER. But just let me make my purpose clear. You say that you have proof of other specifications here that are not included in the Keller specifications, which you will bring in provided the committee will admit that proof. Now, all I wanted to know is, whether or not that proof if brought in here, standing alone, in your

judgment would be of such an important and serious nature that, if true, would subject the Attorney General to impeachment?

Mr. WOODRUFF. I am not clear that it would.

Mr. MICHENER. If that were true, then I believe it should be admitted; but, if it is not anything that amounts to anything, then I think that the country should know that.

Mr. WOODRUFF. I would say to the gentleman that it is something that amounts to something; something of rather a serious nature; but I am not prepared to say it is of an impeachable nature, because that is a most serious thing.

Mr. MONTAGUE. You are not prepared to say whether they would constitute a crime or misdemeanor?

Mr. WOODRUFF. I am not prepared to say that.

Mr. HERSEY. Did you know Mr. Keller was going to make the charges before he prepared them?

Mr. WOODRUFF. I did not. If the committee has ruled I am not allowed to offer anything else, I will withdraw.

Mr. MICHENER. I for one would be in favor of going into this matter if I thought it would be anything worth while, and that was the purpose of the observation I made.

Mr. FOSTER. I again submit we ought to finish the taking of testimony on our present specifications, and if Mr. Woodruff wants the view of the committee on whether it will proceed on something additional or not, or whether he will have to go before the House we can take that up later.

Mr. BIRD. Is not your testimony on the other charges similar to that you have been producing?

Mr. WOODRUFF. No; it is not.

Mr. BOIES. Does not the gentleman know that before a person may be proceeded against by impeachment or for impeachment, or be impeached, that the charges must be made upon the floor of the House?

Mr. WOODRUFF. Of course.

Mr. BOIES. And dealt with in that way?

Mr. WOODRUFF. I do, of course.

Mr. BOIES. Now, do you think, even if you had in your own mind the evidence of charges that were impeachable against Mr. Daugherty, that you ought to be permitted to bring them in here, when they have not yet been submitted on the floor of the House, and to have this committee hear you?

Mr. WOODRUFF. I will say to the gentleman that the only information the House has as to what the committee is investigating is the information given by Mr. Keller on the day he introduced his resolution of impeachment.

Mr. BOIES. I see.

Mr. WOODRUFF. There were no specifications; there was no single solitary thing set forth.

Mr. BOIES. You have not answered the question.

Mr. WOODRUFF. I am answering it by that; my response was an answer to the gentleman.

Mr. BOIES. Do you not think, if anyone believes there are other specifications that should be bringing the foundation for further impeachment charges against Daugherty, they ought to be made in the regular way on the floor of the House, so that the authority

under that impeachment might come from the House to this committee, and do you believe it can come to this committee properly in any other way?

Mr. WOODRUFF. Well, I am reminding you gentlemen that the committee invited me here, and I am simply wishing to learn the desire of the committee, that is all.

Mr. SUMNERS. I would like to suggest, it seems to me in fairness to the gentleman, as I understand the relationship of this committee to this inquiry, that it is now investigating under the authority given it by reference to this committee of House Resolution 425.

Mr. HERSEY. The Keller charges?

Mr. SUMNERS. No, sir; not the Keller charges at all. This resolution is:

*Resolved*, That the Committee on the Judiciary be, and they hereby are, authorized and directed to inquire into the official conduct of Harry M. Daugherty, Attorney General of the United States, and to report to the House whether in their opinion the said Harry M. Daugherty has been guilty of any acts which, in contemplation of the Constitution, are high crimes and misdemeanors.

Mr. GRAHAM. But, that resolution has been referred to this committee simply as any other bill or resolution; it has no vitality at all until it is acted on by the Congress.

Mr. SUMNERS. That is the point; it is merely a direction to see whether there is any evidence of any acts which, in contemplation of the Constitution, are high crimes or misdemeanors.

Mr. GRAHAM. That is under the Keller resolution, if you will pardon me, and that resolution was not adopted by the House, but, like any other bill introduced in the House, was referred to this committee.

Mr. SUMNERS. That is the authority to it to proceed.

Mr. GRAHAM. That resolution is not an act of the House, but just like any other resolution introduced by one man.

Mr. SUMNERS. But it is referred to the committee for inquiry as to the existence of any facts.

Mr. GRAHAM. And which we will report back to the House with our recommendations, affirmative or negative, or anything the committee wishes to report.

The CHAIRMAN. My idea is a little different from that. Mr. Keller made charges on the floor of the House in the usual way. The resolution was simply introduced for the purpose of giving authority to subpoena witnesses and things of that kind. I have taken the position that we, acting for the House, have the same authority as the House to ask what these charges meant, what they pointed to, and it was for that reason, I take it, that we drafted the letter and submitted it to Mr. Keller asking him to tell the committee and the House what he did charge, to what he had reference in his charges. For that reason, I think, unless the committee thinks otherwise, we should confine ourselves to the charges that he made, as he has explained them to us in his specifications.

Mr. FOSTER. Mr. Chairman, is not this true? We started out on the theory that the resolution having been referred to us as any ordinary resolution——

The CHAIRMAN. The charges have been referred to us.

Mr. FOSTER. Yes; that we would proceed to ascertain whether there was probable cause. Now, in order to do that, we asked Mr. Keller to make specifications to furnish the Attorney General, and

they were furnished, and the answer was then filed. The question now comes up whether Mr. Woodruff should be allowed to make additional specifications, copies of which, perhaps, should be sent to the Attorney-General. My suggestion is that we ought to take that matter up when we get through with this. I am not ready to rule on that now, but I prefer to reserve my ruling as to his right to come in here and make additional specifications at this time. If he wants to try that out, he has a right to do that, but that is not the proposition we now have up. We have a resolution offered by Mr. Keller which was referred to the committee, and we are trying that out.

Mr. SUMNERS. I agree with that suggestion.

Mr. FOSTER. And before we take up this request of Mr. Woodruff, I think we ought to finish on the specifications furnished by Mr. Keller, under which we are proceeding, if this is a move to get the committee to say whether it will go further, if he is trying to get the committee to answer that, I want to say, Mr. Chairman, for my part I think that should be deferred until we have finished with these charges and then we could give Mr. Woodruff an opportunity to come in, if he wants to get the views of the committee.

Mr. BOIES. Mr. Chairman, I believe if any member of this committee feels that this resolution from the House authorizes us to go any further than to hear the specifications presented by Mr. Keller, that that member or those members ought to insist that we do go further.

Mr. FOSTER. I think that question should be determined when we get through with these specifications, rather than to stop now to consider it.

Mr. BOIES. It has been suggested here that the resolution from the House authorizes us to go further in the investigation. Now, a member of the committee holding to that opinion, ought to insist that we do go further.

Mr. MICHENER. Just one question more that I want to ask Mr. Woodruff, and that is this: You say, Mr. Woodruff, that this additional evidence which you might introduce has to do with the cantonment matter?

Mr. WOODRUFF. No; the gentleman misunderstood me. The thing I wanted to say in reference to the cantonment cases, is the fact that six months, at least, before the organization of the war-frauds bureau of the Department of Justice, a man then in the Department of Justice who was supposed at least to have control over those cases, announced, so it is claimed, that the cantonment cases were closed.

Mr. MICHENER. Now, as a matter of fact, having in mind your speech made on the floor——

Mr. WOODRUFF. Yes——

Mr. MICHENER. I think you referred specifically to nine cases, did you not—nine cantonment cases?

Mr. WOODRUFF. No, not nine cantonment cases.

Mr. MICHENER. Well, nine cases?

Mr. WOODRUFF. Yes.

Mr. MICHENER. Since you made those charges, actions have been brought in seven of them?

Mr. WOODRUFF. I thin'

Mr. MICHENER. And action is now pending, as I understand it, and will be brought at some time during this week in the other two?

Mr. WOODRUFF. At least in one other. And I will say this, in regard to the Mitsui Co. case, that has not yet been turned over to the Department of Justice; consequently, the Department of Justice is helpless in that particular thing; so that that criticism, as far as my speech on the floor of the House is concerned, has been met.

Mr. MICHENER. That is what I meant, and if you brought any additional proof, it would simply have to do with conditions before those suits were started?

Mr. WOODRUFF. Yes.

Mr. MICHENER. And would have nothing to do with present-day conditions?

Mr. WOODRUFF. That is true.

Mr. MICHENER. Then that would practically wipe out any charges which you might be able to make at this time in the way of impeachment charges as new charges?

Mr. WOODRUFF. I do not want the committee to get the impression that if they do not hear me I am going into the House and move to impeach the Attorney General.

Mr. MICHENER. No; I know you are not.

Mr. WOODRUFF. Because I have no such intention.

Mr. MICHENER. I think you understand my position, and that is, that there would be no ground for you to go into the House and make these impeachment charges at this particular time, in reference to those nine cantonment specifications?

Mr. WOODRUFF. None whatever.

Mr. MICHENER. Therefore, the evidence you might have on those would not be admissible, even though it were introduced here.

Mr. WOODRUFF. I want to say here, as far as my speech on April 11 is concerned, that since the war-frauds bureau has been organized in the Department of Justice I have been highly pleased with the way they have been handled.

Mr. THOMAS. What action has been taken on those specifications?

Mr. WOODRUFF. Suits have been started on all but one, and in that particular case counter-claim has been filed before the Court of Claims.

Mr. THOMAS. Suits have been filed against them?

Mr. WOODRUFF. Yes.

Mr. THOMAS. What was the date when these suits were filed?

Mr. WOODRUFF. I think it was long in June or July, possibly in July.

Mr. THOMAS. Of this year?

Mr. WOODRUFF. Yes.

Mr. THOMAS. You speak of the War Department making a report to the Department of Justice about these war fraud cases: When was that report made, do you know?

Mr. WOODRUFF. On that particular case?

Mr. THOMAS. On any of these cases.

Mr. WOODRUFF. On different dates.

Mr. THOMAS. When was the reference made?

Mr. WOODRUFF. I could not say as to that. I wanted to get into the record just when those cases were referred to the Department of



Justice and I hope the committee will put that into the record, because that will be illuminating. You can get that information from the contract auditing section, or——

Mr. MONTAGUE. I understood you to say about the Matsui Co. case you had no criticism to make of the Attorney General in reference to that case.

Mr. WOODRUFF. None whatsoever.

Mr. MONTAGUE. You do not concur in that charge, then?

Mr. WOODRUFF. Not since the information I received yesterday.

The CHAIRMAN. If that is all, Mr. Woodruff——

Mr. FOSTER. In view of the statement of Mr. Woodruff to Mr. Michener, it occurs to me there is nothing left for the committee to do but to advise him that at this time we do not care to go into the matter further.

Mr. HERSEY. I move that we hear from the Attorney General on these charges.

Mr. MONTAGUE. Do you move to hear him only on the charges that we have gone into, or those which have not been gone into?

Mr. HERSEY. Everything.

Mr. FOSTER. The ones before us now are 4 and 7, and, to be in order, we should take up 4 and 7.

Mr. HOWLAND. I will call Col. Guy D. Goff.

The CHAIRMAN. Is he going to introduce records or to make statements?

Mr. HOWLAND. Oh, swear the Colonel.

### TESTIMONY OF COL. GUY D. GOFF, FORMERLY ASSISTANT TO THE ATTORNEY GENERAL OF THE UNITED STATES.

(The witness was duly sworn by the chairman.)

Mr. HOWLAND. Colonel Goff, on the 21st day of January, 1922, what was your business in the Department of Justice—your particular business?

Mr. GOFF. Well, I was the assistant to the Attorney General of the United States.

Mr. HOWLAND. Perhaps I might say, for the record, Colonel, you should state your name, business and residence.

Mr. GOFF. I have given my name to the stenographer. Do you wish me to state for the record my full name, and residence at the present time?

Mr. HOWLAND. Yes.

Mr. GOFF. Guy D. Goff. I reside at the present time, in Clarksburg, W. Va., and I am temporarily in the city of Washington. Answering the question propounded by Mr. Howland, I was, throughout the entire month of January, 1922, assistant to the Attorney General of the United States and, as such, I was charged with the duties, among others, of looking after the prosecution of war fraud contracts, so termed.

Mr. HOWLAND. Was your attention particularly directed to what we have known here as the Wright-Martin war contracts?

Mr. GOFF. Yes, sir.

Mr. HOWLAND. I will ask you a copy of a letter that you wrote to the people. It is already in evidence.

Mr. GOFF. Yes, sir.

January 21, 1922, this is a copy of the Wright-Martin contract paper to witness.]

Mr. HOWLAND. At that time, Colonel Goff, explain to the committee the standpoint of this case with reference to the preparedness of that matter for filing in court.

Mr. JEFFERIS. Is this the same letter Mr. Woodruff introduced?

Mr. HOWLAND. Perhaps I ought to read it.

Mr. JEFFERIS. I would like to know what this letter is.

Mr. HOWLAND. It has been read once, so you need not take it in the record.

Mr. JEFFERIS. Just say what it is.

Mr. HOWLAND. This is a letter from Guy D. Goff to Mr. Wallace, who was counsel for the Wright-Martin aircraft people, dated January 1, 1922.

Mr. JEFFERIS. The same one that was read by Mr. Woodruff?

Mr. HOWLAND. Exactly; the same one. Now, if you will read the question I asked Colonel Goff.

The STENOGRAPHER (reading):

At that time, Colonel Goff, explain to the committee the standpoint of this case with reference to the preparedness of that matter for filing in court.

Mr. GOFF. The case, as has been stated, came to the department from the War Department some time prior to the date of that letter. It was sent by Judge Lovett's division—which is the division of all claims against the United States, and also some claims in favor of the United States—and was by that office sent to the United States attorney in the southern district of New York.

Subsequently the attorneys for the Wright-Martin Co., of which Mr. William Wallace, the addressee of that letter, was the principal attorney, requested that they be allowed to present oral arguments and file briefs in opposition to the continued prosecution of that claim.

That privilege was given the attorneys; the hearing was held in my office. It was attended by the Judge Advocate General of the Army and the representatives of the auditing section of the War Department. It was also attended by the attorneys in the Department of Justice, who were charged with the duty of investigating this matter.

It was finally decided, after the arguments and consideration of the briefs and the receipt of the briefs and subsequent memoranda from the Judge Advocate General of the Army, that the prosecution should continue. That was my view, and I wrote that letter, signed it, and it was sent over to the attorneys for the Wright-Martin Co.

There then developed a difference of opinion as to whether there was a sufficient audit to justify the drawing of a bill; and, in that connection, while it is possibly outside of your question, attorneys were employed to draw such a bill and to go through this very voluminous record and obtain from it such facts as should be set up to support the claim of the Government.

Mr. HOWLAND. From the time that you wrote this letter down to the present moment, what attention has this matter been receiving from the Attorney General's office, to your knowledge?

Mr. GOFF. It has received the usual attention given to such cases, in the form of interviews with the attorneys having the matter in charge, with now and then letters fixing interviews, as I recall it, and a general discussion of the legal questions involved, and the construction placed by the attorneys upon the meaning of the contract which was the basis of the suit.

Mr. HOWLAND. Was there some question raised as to whether or not the Government had a cause of action under all the facts in this case?

Mr. GOFF. That was one of the causes of discussion and argument between the several attorneys.

Mr. JEFFERIS. That is, Government attorneys, were they?

Mr. GOFF. Oh, yes, sir.

Mr. HOWLAND. Oh, yes.

Mr. GOFF. All within the Government?

Mr. HOWLAND. Without disclosing the decision of the department, do you know whether or not now a decision has been reached in regard to all these matters?

Mr. GOFF. It is my understanding that a decision has been reached, and the decision is to forthwith prosecute the case.

Mr. HOWLAND. Let me ask you, Colonel, about what we have referred to here as the war claims—or war fraud division, the technical name is—that was created along in June.

Mr. GOFF. War contract section?

Mr. HOWLAND. Yes.

Mr. GOFF. I think that was the name used.

Mr. HOWLAND. Can you explain to the committee the organization of that section, so that the committee will understand the magnitude and the effort that is being made to cover this enormous ground?

Mr. GOFF. After the passage by Congress of the resolution authorizing the appropriation and the creation of such a division, the Attorney General, with my knowledge—and with such assistance as he from day to day requested me to give him—proceeded to discover men suitable to take charge of such cases. As I now recall, several of the attorneys were former and present Members of Congress, who had been charged in their official duty as congressmen with investigating some of the cantonment cases and some of the other cases of a war fraud character.

Then the Attorney General created an advisory board, which consisted of former Senator Thomas, of Colorado; Judge Kerr, who up to that time was the United States judge in Panama; and Judge Bigger, of Ohio. These gentlemen, with the Attorney General himself sitting with them, constituted what was known as the advisory board of the war contract section.

Mr. HOWLAND. Now, under the advisory board, what attorney had charge of contracts relating to quartermaster supplies and quartermaster contracts?

Mr. GOFF. I think former Congressman Reavis.

Mr. HOWLAND. And cantonments?

Mr. GOFF. Former Congressman McCulloch, of the Canton district in the State of Ohio.

Mr. HOWLAND. Who had charge of ordnance contracts?

Mr. GOFF. Colonel Anderson, of Richmond, Va.

Mr. HOWLAND. And aeronautics?

Mr. GOFF. Mr. Meier Steinbrink. I might add that he was selected after a conference with Chairman Graham of the investigating committee and Congressman Frear of that committee. The Attorney General learned that Mr. Steinbrink had been associated with Mr. Secretary of State Hughes, when, under the Wilson admin-

istration, an investigation of aeronautics had been ordered, and Mr. Steinbrink had then acted as the assistant to Judge Hughes.

Mr. YATES. That is the gentleman mentioned in the answer?

Mr. HOWLAND. Yes, sir.

Mr. GOFF. Then the committee report of the Graham committee indicated that Mr. Steinbrink had offered his services because of the knowledge so acquired with Mr. Secretary of State Hughes to the committee. He went with a subcommittee—I do not now recall the Congressmen composing it—to the Pacific coast to investigate all matters in any way connected with aeronautics, and the Attorney General then opened up correspondence with Steinbrink, which resulted finally in his being placed in charge of those cases.

Mr. HOWLAND. That is all, unless the committee desires to ask you some questions.

Mr. JEFFERIS. I would like to ask, Colonel: Mr. Wallace was given an opportunity to present a brief and oral argument?

Mr. GOFF. Yes; oral argument—and the brief was filed subsequently to the oral argument.

Mr. JEFFERIS. Now, on whose responsibility was that given—was that yourself?

Mr. GOFF. The request came, as I recall it, through the War Department. It seems that after the decision of the auditing section of the War Department to prosecute this case was made known, that the Wright-Martin Co. requested the War Department to permit its attorneys to present to the Department of War their construction and interpretation of this contract, and the matter of this request was then brought to the attention of the Department of Justice. I will not assume to state the means by which it came, but it came to my attention that these attorneys desired to be heard before this suit was filed; and I considered the request not only reasonable but proper under the circumstances. I desire to say to this committee that it was I personally who took the responsibility of giving these gentlemen that hearing.

Mr. HOWLAND. And, Colonel, that is not out of the ordinary and usual procedure, is it?

Mr. GOFF. No, sir. I think possibly I should add that the matter of giving them a hearing never came to the attention of the Attorney General of the United States, because I considered it a detail too immaterial to bring to his notice.

Mr. FOSTER. May I ask you a question?

Mr. GOFF. Yes.

Mr. FOSTER. When did you go with the Department of Justice?

Mr. GOFF. The 16th day of March, 1921.

Mr. FOSTER. Would you indicate to the committee the volume of work resulting from the war which landed in the Department of Justice, which would be considered extraordinary because of the war? I have in mind the volume of the work—how much work was there for the force they had, compared with the average work of the office?

Mr. GOFF. I can say this: Before I went to the Department of Justice I had been the general counsel of the United States Shipping Board and as such knew something of the volume of the work coming into the departments of the Government as the result of the war. When I went to the Department of Justice we found that

many of the cases that had come there had not been audited or followed up, because there had been more or less confusion attendant upon their receipt. We found that every department was overcrowded with cases; that was especially the condition in the department presided over by Judge Lovett. It was also true——

Mr. FOSTER (interposing). Tell the committee what that department was.

Mr. GOFF. That was the department having charge of the Court of Claims cases, and some cases in which the Government had claims.

That was also true of the department over which I presided, especially in many of the cases coming there, antitrust cases growing out of the war—there had been a great many of those, and there had not been, as possibly the committee will recall, a prosecution of some of those cases during the war because when the war was on many of such laws were, for the purposes of effectively carrying on the war, not enforced.

Then later on, I saw that there were a great many cases in the criminal law section, growing out, not only of the war fraud cases, which presented a criminal side, but growing out of the many infractions of the criminal laws of the United States.

I also found there were many cases down in the Land Office section of the department, presided over by Assistant Attorney General Riter.

We also found that the number of cases that came into the section presided over by Assistant Attorney General Ottinger, who had charge of the tax and the admiralty cases growing out of the war—because when the Government took over the vessels the admiralty laws of the United States were practically suspended, and when there were collisions between vessels during the war, those collisions presented themselves in the form of claims against the Government and not in the form of actions in admiralty; and then in the enforcement of the prohibition laws in the department there were a great many cases raising many new points of law. The force was, of course, about the same as it had been before the present Attorney General took charge. He called his force together, and asked them if they would all work longer hours—as long as possible.

I think everyone on the department did his and her best; they came early and they stayed late.

I can state to the committee that it was uniformly the practice to get to the department between half past 8 and 9 o'clock and stay always until 7 o'clock in the evening and sometimes later, and that many of us in the discharge of the duties in which we were then engaged came back after the evening hour and worked much later.

Mr. FOSTER. Let me ask you this general question: What percentage of the volume of work in the Attorney General's office, while you were there, would you say was the result of the war, as distinguished from the ordinary work of the department?

Mr. GOFF. I would say at least from 50 to 60 per cent.

Mr. FOSTER. And the number of employees—attorneys employed in these matters—how did that compare in numbers with the average before the war period?

Mr. GOFF. I do not think there were any more. Now and then there might have been an additional attorney.



Mr. FOSTER. You are no longer connected with the department?

Mr. GOFF. Not in any official capacity, except I am completing some cases; no.

Mr. FOSTER. Were these cases that we have had under investigation in these impeachment proceedings—was action on them unduly delayed, as you observed?

Mr. GOFF. I would say not.

Mr. HERSEY. This is a question for the committee.

Mr. CHANDLER. This is an expert appearing before the committee, and I think he ought to be allowed to state.

Mr. FOSTER. I assume he was there in the department more than the committee and therefore ought to know.

Mr. GOFF. Do you want me to answer the question?

Mr. HERSEY. I have no objection.

Mr. GOFF. I would be very glad to answer the question. I would say there was no unusual delay. These came to the Department of Justice from the other departments of the Government. The Department of Justice acted as the legal adviser of the other executive departments. It could not and did not hurry up these cases from these departments until they were ready to send them over. When they came, they came in the form of a claim that had been audited by another department of the Government.

It became the duty of the Department of Justice to thoroughly investigate these matters, to investigate them with their expert lawyers and their expert accountants, to see whether or not under the proper construction of these contracts the claims could be justified.

It was often found that when the claims came, there was no evidence proper to be submitted to a court, no evidence as to what witnesses could be relied upon to say in support of the Government's claims. The witnesses were scattered all over the United States, because when the war ended, many of these witnesses that had been concentrated in Washington and other points dispersed to their homes. It was a long and tedious process to find these witnesses and to examine all of them. Some had gone to foreign countries; some were in South America representing 71 American business houses, and it was not an easy matter; it was not a matter similar to a claim arising in a locality with the witnesses there, or even in a State. It was nation-wide, and in some cases world-wide.

Mr. FOSTER. Let me ask you one further question: During the years 1919 and 1920 Congress had select committees investigating the shipping and war contracts, known as the Walsh and Graham committees?

Mr. GOFF. Yes, sir.

Mr. FOSTER. They worked during the most of two years, did they not?

Mr. GOFF. Yes, sir.

Mr. FOSTER. Did the reports of those committees toward the end increase the work of the department?

Mr. GOFF. Not only increased it, but they supplied the original source of investigation of much of it.

Mr. FOSTER. Those committees were working during practically the entire year of 1919 and 1920?

Mr. GOFF. Yes, sir.

Mr. THOMAS. May I ask you a question? Have you any knowledge of the Hayden letter referred to Mr. Woodruff?

Mr. GOFF. I have not, sir.

Mr. HERSEY. Mr. Goff, did the Wright-Martin Aircraft Corporation file a claim against the Government in the first instance?

Mr. GOFF. I understood that there was some claim in the War Department which was disallowed by the Contract Board of the War Department, which board was instituted under the Dent Act.

Mr. HERSEY. But the Wright-Martin Corporation claimed there was something due them from the Government?

Mr. GOFF. Yes, sir; they did.

Mr. HERSEY. And they persist in that down to the present time?

Mr. GOFF. They persist in that, and I might state, as relative to your inquiry, that they always asserted they would raise that claim by a counterclaim to the Government's case.

Mr. HERSEY. And they have nowhere acknowledged that the claim the Government has against them and on which they brought a suit, or will bring suit—there is any part of it they owe the Government?

Mr. GOFF. No, sir; on the contrary, they positively deny it.

Mr. THOMAS. Mr. Goff, when did the Department of Justice make the report concerning the Wright-Martin Corporation—I mean, when did the War Department make a report to the Department of Justice?

Mr. GOFF. Well, I could not, without referring to the records, Mr. Thomas, accurately answer that question. I can say this to you, that almost immediately after it came to the Department of Justice it received attention and went to the United States attorney in New York, after a preliminary investigation by the attorneys in the claims department.

Mr. THOMAS. But you do not know when that report was made?

Mr. GOFF. No. I would say it was not more than 30 days and prior to that time.

Mr. HERSEY. Do you consider it a part of good judgment on the part of the Department of Justice and Attorney General Daugherty to immediately bring suit upon the report of the War Department, without investigating it through his own department?

Mr. GOFF. No, sir; and I consider that it would have been a neglect of the duty which he owed, not only to the department but to the people, to be sued, if, without an independent and thorough legal investigation, he had so acted.

Mr. THOMAS. Has suit been brought yet in that case?

Mr. GOFF. No, sir. I understand the papers are now being prepared for the suit.

Mr. THOMAS. Will you please furnish the committee the date on which the War Department made this report to the Department of Justice?

Mr. GOFF. Yes, sir. I suppose we can find it. I assume it is right here now in our papers.

Mr. FOSTER. It was introduced here.

Mr. YATES. It was October.

Mr. THOMAS. I asked Mr. Woodruff the question, and he said he did not know, as I understand it.

Mr. HERSEY. The letter shows when it was reported.

Mr. FOSTER. It was in October, as I understand it.

Mr. HERSEY. The letter shows when it was reported.

Mr. FOSTER. It was in October, I am advised.

Mr. HERSEY. What year?

Mr. FOSTER. 1921.

Mr. HOWLAND. It was 1921.

Mr. YATES. The charges were dated October 26.

Mr. SEYMOUR. That is correct.

Mr. HOWLAND. That is right.

Mr. GOFF. I think that is approximately accurate.

Mr. GOODYKOONTZ. You have stated that you allowed the Wright-Martin people's counsel to appear; that you did that out of courtesy to the Wright-Martin people. Was not that conference also of advantage to the Government in being able to know the position of counsel with respect to not only the construction of the contract but of the law?

Mr. GOFF. Yes, sir.

The CHAIRMAN. That may not be relevant, although along the same line. In reference to the trust cases certified by the Federal Trade Commission to the department, what has been the custom—to have an independent investigation?

Mr. GOFF. To have an independent investigation in those instances in which the attorneys of the Department of Justice considering these case and the reports thought it to be necessary.

The CHAIRMAN. In this connection, do you investigate as to the facts, or does the Federal Trade Commission furnish a detailed statement as to what each witness will testify?

Mr. GOFF. In some cases they do and in some cases they do not.

Mr. FOSTER. Mr. Woodruff may want to ask Mr. Goff some questions.

Mr. WOODRUFF. I would like to ask, if the Colonel will permit, one or two questions. Colonel, you have stated, in response to the questions asked by the gentleman from Ohio, Mr. Foster, that you believed that from 50 to 60 per cent of the cases down there in the department were cases arising from the war?

Mr. GOFF. I would say, approximately that. Now, of course, you will appreciate that is an approximate statement.

Mr. WOODRUFF. I understand that, and I think the gentleman is quite well within the facts. I think he has made a very conservative estimate.

You have further stated that your organization down there had not been increased to any considerable extent as a result of the congestion?

Mr. GOFF. With the exception of some few.

Mr. WOODRUFF. Yes; notwithstanding the fact that the business of the department had increased 60 per cent as a result of the war?

Mr. GOFF. Yes, sir.

Mr. WOODRUFF. Now, I want to ask the Colonel, if he at any time advised with the Attorney General regarding the situation and the advisability of asking the Congress for additional appropriations in order to increase the personnel of the department to take care of this vast increase of work?

Mr. GOFF. Yes. The Attorney General and I conferred upon that subject and came to this conclusion: That when the audits of the

other departments came to the Department of Justice in such volume that we felt the force then investigating could not handle those cases, that then the time would come, with that as a basis, to go to the Congress and say: "This case and that case has come from the separate departments of the Government, and we have not the force necessary to handle them properly."

Mr. WOODRUFF. You have already stated that. I understood, at least, that your inference was that almost from the very inception of your duties down there this vast increase of work had piled up on the department?

Mr. GOFF. Oh, yes; and we were handling it.

Mr. WOODRUFF. And I would like to ask this one more question.

Mr. GOFF. Certainly.

Mr. WOODRUFF. Did the Secretary of War ever discuss the Wright-Martin case in any way with you?

Mr. GOFF. I can not say that the Secretary of War did it or who did it. But some one requested me, from the War Department, as I recall, by telephone, saying that since the case had left the department and gone to the Department of Justice, that requests had been made that the attorneys for the Wright-Martin Co. be given a hearing. I replied that I would gladly give them a hearing and would so arrange a date.

In response to that statement I asked the United States attorney in New York, who had the papers, to come to Washington with his force and notify the Attorney General's office, and asked him to notify the necessary members of the auditing committee; and then we had the conference which I have referred to in the course of my statement.

Mr. WOODRUFF. I want to make clear my opinion of such hearings. I think it is the thing, absolutely, in all cases, before you start suit, before you haul a man into court to give him an opportunity to say what he has to say. I have no criticism of Colonel Goff, as regards that hearing.

Mr. THOMAS. Colonel Goff, how many attorneys are there connected with the Department of Justice here in Washington?

Mr. HERSEY. At the present time?

Mr. THOMAS. Yes.

Mr. GOFF. I can not answer that question definitely.

Mr. THOMAS. Well, approximately.

Mr. GOFF. I would say 75 to 100.

Mr. THOMAS. Seventy-five to a hundred.

Mr. GOFF. Something like that. I can give you accurate information if I can refer to the books.

Mr. HOWLAND. It is in the report of the Attorney General.

Mr. GOFF. It is in the report of the Attorney General, yes, sir.

Mr. HOWLAND. And, that is on file.

Mr. THOMAS. I do not have a copy of that.

Mr. HOWLAND. Well, you can get a copy of it.

Mr. GOFF. Is there anything further, Mr. Chairman?

The CHAIRMAN. No, sir.

**AFFIDAVITS AND PAPERS SUBMITTED IN CONNECTION WITH  
TESTIMONY OF HON. WILLIAM J. BURNS, CHIEF OF INSPEC-  
TION DIVISION, DEPARTMENT OF JUSTICE.**

Mr. HOWLAND. I just want to introduce some papers that we had promised the committee that we would introduce at the time that Mr. Burns was on the stand and was testifying, with reference to specification No. 13, he called the attention of the committee to the fact that he would offer in evidence certain affidavits. In compliance with that offer, we have those affidavits, and in compliance with the request of the committee I will now file them with the committee: They have already been offered in evidence. The first is the affidavit of Horace Tillard Jones.

Mr. GOODYKOONTZ. What is the date of its verification?

Mr. THOMAS. Yes; when was that?

Mr. HOWLAND. This has reference to specification No. 13, testimony of Mr. Burns. It is dated February 27, 1917. And is sworn to before a notary public.

(The affidavit referred to is printed in the record in full, as follows:)

STATE OF CALIFORNIA,

*City and County of San Francisco, ss:*

Horace Tillard Jones, being first duly sworn, deposes and says:

I was employed as a special agent of the United States General Land Office from September, 1903 to June, 1910. From January, 1905 to January, 1910 I was assigned from time to time to assist Francis J. Heney in the land fraud prosecutions in Oregon, to which William J. Burns had also been assigned by the Government.

I am personally acquainted with the method pursued in the investigation of trial jurors in those cases. This method was, substantially, as follows:

After the jurors names had been drawn by the clerk of the court, lists of the same were secured by the United States Attorney's office and steps were taken to ascertain, by inquiry of postmasters and other prominent residents of the towns where the respective jurors lived, the character and associations of the jurors and whether or not they were fair-minded, or prejudiced against the prosecution of land frauds. In a number of cases statements were made by our informants to the effect that certain jurors had been heard to say that they would not convict a man for land frauds, and that they were antagonistic to such prosecutions. Others said that they would not convict any man on any testimony produced in a case that Heney prosecuted. Others said that they knew the land fraud ring that had been operating in Oregon for years and would convict on any evidence that was satisfactory of the guilt of such persons. Others were said to be convicts or acquitters from general inclination; and so on.

The name of the respective juror would be put at the top of a sheet of legal cap typewriter paper and then underneath the name of the juror would be placed all the data that could be gathered concerning his reputation, standing in the community, and general qualification for acting as a juror. The statements of from 6 to 12 different persons concerning such qualifications were secured and tabulated in the manner above designated. This was the only way to get these facts and prevent prejudiced jurors from swearing themselves on the jury and thus obstructing justice.

It was a portion of my work to take care of these reports of the agents in the field, and in some cases I went personally into the field myself to find out about jurors.

The instructions given to the agents was in every case to refrain from seeing any juror personally. This was extended even to relatives of the juror, in order that no charge of seeking to influence a prospective juror might be properly laid against the prosecution.

I have been told, and believe it to be true, that the attorneys for the defense were getting similar data concerning the jury lists.

Among the persons who gave data concerning such jurors were ex-Gov. Oswal West, William B. King, attorney for the United States Reclamation Service; L. H. MacMahon, of Salem, Oreg.; Asahel Bush, formerly of Bush's Bank in Salem, Oreg.; and a number of other prominent citizens of the State of Oregon.





deputy clerk at the time. It is noticeable that the positive statements of denial are chiefly in the nature of an assertion that neither Captain Sladen nor the jury commissioner could have been implicated in the affair. Even Burns in his first telegram does not reply directly, but says that there is no truth in the statements that Captain Sladen or Bush furnished him with the information, and Mr. Marsh's emphatic statements have been largely of a similar nature. Indeed, some of the information which Mr. Burns secured, and secured so promptly, it would seem, could not have been obtained in any other way."

That I was the deputy clerk at the time mentioned in the report and am the person whom the report says acted in collusion with Burns. The statement in the foregoing report that I acted in collusion with Mr. Burns in any way in connection with selecting names for the jury box of the court, and any statement that I did anything in connection with Mr. Burns in selecting names for the jury box, or that I did anything at all with reference to the jury in connection with Mr. Burns either directly or indirectly, is absolutely and unqualifiedly false. I did not at any time, directly or indirectly, furnish to Mr. Burns any of the names for the jury box nor to any one for him, nor did I act in collusion with Mr. Burns in any way in connection with the filling of the jury box, nor did I have anything to do with the filling of the jury box. I did not at any time know that Mr. Burns had the names that were secured for the jury box. This denial is intended to be as broad, as unqualified and as unreserved as it is possible to be made. I had no notice at any time during the investigation by Mr. Wickersham of the application of Willard N. Jones for pardon that my personal connection with these matters was under investigation. I was not at any time notified of any charge against myself nor given any opportunity to meet any alleged evidence connecting me with these matters and was wholly ignorant of the effort to involve me in these matters. I did not know of the foregoing statement in the report of former Attorney General Wickersham until long after the report had been made. As soon as I learned of the contents of the report I made repeated efforts to have the same reopened so as to ascertain what the record contained upon which the said report so far as it reflected upon me was based, but all of my efforts in that regard have been unsuccessful.

G. H. MARSH.

Subscribed and sworn to before me this 3d day of July, 1917.

[SEAL.]

FRANK L. BUCK,  
*Notary Public for Oregon.*

My commission expires November 1, 1920.

Mr. HOWLAND. Also the affidavit of Charles W. Cobb, of the State of California.

Mr. THOMAS. What is his business?

Mr. HOWLAND. I do not know; I have not read the affidavit carefully. It is dated the 19th of February, 1917.

He was at the time the matters occurred to which he is swearing Assistant Attorney General, and for a long time had been and still was well acquainted with said Heney and Burns. Does that answer your question?

Mr. THOMAS. Yes; I just wanted to know.

(The affidavit referred to is printed in the record in full, as follows:)

STATE OF CALIFORNIA,

*City and County of San Francisco, ss:*

Charles W. Cobb, being first duly sworn, deposes and says:

From May, 1911, until September, 1913, I was Assistant Attorney General of the United States, assigned by the President to the Department of the Interior at Washington, D. C.

Prior to that time the United States had conducted certain criminal prosecutions in the State of Oregon known as the Oregon land fraud cases. Those cases were conducted on behalf of the Government by Mr. Francis J. Heney, who during a portion of the time was United States district attorney for Oregon. Mr. William J. Burns, who was then in the Secret Service of the Government, was assigned for duty this prosecution.

During the said time that I was Assistant Attorney General and for a long time prior thereto, I was, had been, and still am, very well acquainted with said Heney and Burns.

Sometime, I think in the year 1912, Burns came to my office at the Department of the Interior and told me that one Jones, who had been convicted in said land fraud cases, had made application to the President for a pardon and that the application was then being investigated by the Department of Justice. He told me that among the matters and papers which had been filed with said application were certain affidavits attacking the fairness and integrity of Heney and himself in and about the conduct of the prosecution of the said Jones and particularly in the matter of the selection summoning and investigation of trial jurors. He complained to me that the statements in those affidavits were outrageously false and untrue and that if given the opportunity he could demonstrate their falseness and maliciousness. He further stated that he was satisfied that the said Jones had expended a large sum of money in his endeavors to obtain a pardon.

After explaining these things to me at length he stated that he had called on three different occasions at the Department of Justice seeking an interview with the Attorney General in regard to the matter, but on each occasion was unsuccessful, as the Attorney General was either absent or at the time busily engaged. He asked me if I would accompany him to the Department of Justice and endeavor to arrange a conference between him and the Attorney General. I agreed to do so, and we departed for the Department of Justice.

On the way he informed me that on one occasion he had seen and talked with Mr. James A. Finch, attorney in charge of pardons in the Department of Justice, and had explained the whole situation to the latter, denying and branding as false the allegations in said affidavits and particularly had pointed out to the said Finch that certain handwriting on certain of the papers filed in the record on said application for pardon which was alleged to be that of Burns was in fact the handwriting of one Thomas Neuhausen, and that said Neuhausen was the person who had really investigated the jurors, and further that notations on certain sheets of paper containing the names of prospective jurors were in Neuhausen's handwriting and not in that of Burns, as alleged.

When we arrived at the Department of Justice we found that the Attorney General was not there and probably would not be again that day, and the proposed conference had to be abandoned for the time being, as Burns had to leave for New York that night.

Burns stated, however, that he would then call and attempt to have a further conference with the said Finch and proceeded to the latter's office, while I went into another part of the building to talk with Assistant Attorney General Knaebel, where I told Burns to meet me. He came there in a few minutes, stating that he had been unable to see Finch. We talked with Mr. Knaebel for a while on general subjects not including this one and then left.

Since that time Burns has frequently talked to me about the matter, expressing a keen desire to have it opened and investigated, as he was prepared to show the viciousness and falsity of the attacks thus made upon him and Heney and have the record disclose their absolute fairness and proper conduct in said prosecution and their absolute innocence of all of the charges thus made. He has told me that the ex parte record thus made against him has been used repeatedly by enemies of his and by business adversaries, making it necessary for him in each individual case to defend himself, which he complains he ought to have an opportunity to do once and for all before the proper authorities at Washington, so that the record might be made to speak the truth.

CHARLES W. COBB.

Subscribed and sworn to before me this 19th day of February, 1917.

[SEAL.]

ALICE SPENCER,

*Notary Public in and for the City and County of  
San Francisco, State of California.*

Mr. HOWLAND. Affidavit of Walter L. Fisher, who was at one time Secretary of the Interior. This affidavit bears date of the 26th day of December, 1917.

(The affidavit referred to is copied in the record in full, as follows:)

STATE OF ILLINOIS,  
County of Cook, ss:

Walter L. Fisher, being duly sworn, states  
prior to the inauguration of President Wil-  
son as Secretary of the Interior of the United States  
prior to the said inauguration William J

that during the two years  
1913, this affiant was Secre-  
tary as so acting and shortly  
prior to this affiant regarding the

circumstances connected with the pardon of Willard N. Jones; that said Burns expressed great indignation regarding the granting of said pardon and regarding certain matters connected therewith, the exact nature of which matters this affiant no longer recollects; that said Burns requested this affiant to secure for him an interview with the President of the United States, Hon. William H. Taft, or with the Attorney General of the United States, Hon. George W. Wickersham; that this affiant spoke to the said President and to the said Attorney General; that the said President said to this affiant that the matter was one to be taken up with the said Attorney General, and the said Attorney General stated to this affiant that he was then so absorbed in other matters and would be leaving office so soon that he would be unable to take the matter up, and that the said Burns could take the matter up, if he so desired, with the incoming administration; and that this affiant thereupon informed the said Burns of the said statements of the said President and the said Attorney General.

WALTER L. FISHER.

Subscribed and sworn to before me this 26th day of December, 1917.

[SEAL.]

DARRELL S. BOYD,  
*Notary Public.*

Mr. HOWLAND. Also an affidavit of Francis J. Heney, bearing date of June 9, 1917.

(The affidavit referred to is printed in the record in full, as follows:)

STATE OF CALIFORNIA,

*County of Los Angeles, ss:*

Francis J. Heney, being duly sworn, deposes and says that at the request of George W. Wickersham, then Attorney General of the United States, he read certain charges which had been made against William J. Burns in connection with the application for the pardon of one Willard N. Jones, and that he prepared and filed with the Attorney General an answer to said charges, and that thereafter his attention was called by the Attorney General to some additional charges in connection with the same matter and particularly to an affidavit that was made by one C. N. McArthur, of Oregon, who is now a Member of Congress, and that the statements made by McArthur in said affidavit to the effect that he had a certain conversation with William J. Burns in my presence are utterly and absolutely false, and are wholly without any foundation whatsoever; and that he can not at this time answer said statement with any greater particularity because he can not now recall the specific language of them; and that the statements which McArthur alleges were then and there made by William J. Burns were not made by said William J. Burns at that time or at any other time in the presence or hearing of affiant, and that he does not believe that any statement of similar substance or effect was ever made by said William J. Burns at any time or place, and that the statements which said McArthur alleges in his affidavit to have been made by this affiant were not then or there so made, and that this affiant did not at any time or place make any statement of any kind which was similar in substance or effect to any of the aforesaid statements so alleged by McArthur to have been made in his presence.

FRANCIS J. HENEY.

Subscribed and sworn to before me, this 9th day of June, 1917.

LILLIAN M. GOLDING,

*Notary Public in and for the County of Los Angeles, State of California.*

My commission expires April 26, 1919.

Mr. YATES. What is the purpose for which that is offered?

Mr. HOWLAND. This is not offered for any purpose. It is in connection with Mr. Burns's testimony. When he was on the stand he referred to these affidavits and said he would file them later, and I am just carrying out Mr. Burns's wishes.

Mr. THOMAS. What is the substance of the affidavits, Mr. Howland?

Mr. HERSEY. We can read them.

Mr. HOWLAND. Yes, sir; you can read them. These gentlemen were associates with Mr. Burns in the work that he was doing in connection with the land fraud cases in the State of Oregon away back in 1905.



Also an affidavit of Francis J. Heney, bearing date of June 1, 1917, and having been duly acknowledged.

(The affidavit referred to was printed in the record in full, as follows:)

STATE OF CALIFORNIA,

*City and County of Los Angeles, ss:*

Francis J. Heney, being duly sworn, deposes and says that he was the duly appointed, qualified, and acting Special Assistant Attorney General of the United States in charge of the so-called land fraud prosecutions in Oregon during the years 1903, 1904, 1905, and 1906, and again in 1909; and that during a part or all of the year 1905 he was duly appointed, qualified, and acting United States attorney for the district of Oregon; and that as such Special Assistant Attorney General during a portion of the time and as such United States attorney for the district of Oregon during the remainder of the time, he had full charge of the prosecution of Willard N. Jones, and conducted the investigations before Federal grand juries which resulted in two different indictments against Jones and others on charges of conspiracy to defraud the United States; and he likewise conducted the two separate trials of said Jones and others, in each of which said Jones was convicted on charges of conspiracy to defraud the United States; and that he examined upon their voir dire all of the jurors who were called into the jury box to try said Jones in each of said cases; and that he knows each and all of the 24 jurors who convicted Jones upon said respective trials; and that each of said last-mentioned jurors, in the opinion of affiant, is and was a reputable citizen of good standing in the community in which he then resided, and that each of said jurors, in the opinion of affiant, is and was an honest and impartial juror in the case in which he acted: and that there was filed with the Department of Justice of the United States, at Washington, D. C., a report from John McCourt, then the duly appointed, qualified, and acting United States attorney for the district of Oregon, which contains the unqualified statement that said John McCourt had thoroughly investigated each and all of said 24 jurors, and that, in his opinion, each of them stood well in the community in which he then resided, and was an honest and impartial juror upon the trial of said Jones.

That said report was so made by said John McCourt upon the request of the then Attorney General of the United States, George W. Wickersham, and that the original thereof was shown to this affiant by said Attorney General shortly after the same was filed, and at the request of said Attorney General this affiant then and there filed a reply to certain statements which were therein made by said John McCourt as mere inferences and deductions from supposed facts which had no existence, and from other real facts which did not have certain significances which he attached to them by way of inference; and that according to the best present recollection of affiant, Thomas B. Neuhausen, who was then a special representative of the Department of the Interior of the United States, conducted the investigation of all the jurors whose names had been put into the jury box by the clerk of the circuit court of the United States and the jury commissioner, in accordance with the laws of the United States, and from which box the names were drawn of the jurors who tried and convicted said Willard N. Jones in each of the aforesaid cases; and that according to the best present recollection of affiant, William J. Burns was not in charge of the investigation of said, or any of said, jurors; and that none of the jurors whose names were put into said jury box were investigated by said William J. Burns or under his direction prior to such names being put into the jury box; and, on the contrary as a matter of fact, this affiant complained vigorously, long after said names had been put in the jury box, about the fact that he was not furnished with any report upon many of the jurors who were examined by him upon their voir dire for service upon the aforesaid two juries which tried and convicted said Jones; and that according to the best recollection of this affiant, he was without reports upon about one-fourth of the jurors who were examined by him upon the second trial of said Jones and of more than that proportion upon the first trial.

That affiant is certain that said William J. Burns did not do anything whatsoever of an improper nature or character in connection with the putting of the names of jurors in the jury box from which the names of jurors were drawn for either of the trials of said Willard N. Jones, or otherwise or at all in connection with said jurors or any of them; and that affiant is certain that said Willard N. Jones did have a fair and impartial trial in both of said cases, by jurors who were each and all honest, intelligent, and impartial; and that during the second trial of said Jones, one Fenton, who was then general counsel for the Southern Pacific Railroad Co., appeared as the attorney for Pierce Mayes, a codefendant of Jones. When affiant was making his final argument to the jury, said Fenton in remarks made during his argument and when being taken to task for and effect, "I will leave my



skin with the jury; I have six personal friends on that jury"; and that said Willard N. Jones boasted before the verdict on the first trial, that he had three personal friends on the jury and therefore was not afraid of a conviction; and that in the opinion of affiant, the evidence in each of said cases clearly proves the guilt of said Jones; and that in the opinion of affiant the pardon of said Jones was wholly unjustifiable and was largely tainted with political considerations; and that the charges made against said William J. Burns in connection therewith are without any substantial foundation; and that both the convictions of Jones occurred prior to October, 1906, and that no charge of irregularities of any kind in connection with the filling of the jury box was made until about five or six years thereafter, and until after Captain Sladen, clerk of the circuit court of the United States, who filled the box, was dead, and until after Mr. Bush, the Democratic jury commissioner, who assisted in filling the box, had become weakened in memory from old age; and until after the memory of affiant as to the details of the matter was no longer clear and distinct on account of intervening activities in conducting graft prosecutions in San Francisco continuously for a period of three years from November, 1906, to November, 1909; and further deponent saith not.

[SEAL.]

FRANCIS J. HENEY.

Subscribed and sworn to before me, this 1st day of June, 1917.

LILLIAN M. GOLDING,  
Notary Public in and for the County of  
Los Angeles, State of California.

My commission expires April 26, 1919.

(Affidavit of Mr. Irvin Rittenhouse is also offered.)

Irvin Rittenhouse, whose address is 503 Fifth Avenue, New York City, being duly sworn, states:

He was appointed in the General Land Office, Department of the Interior, in 1899, through competitive civil service examination. He held various positions in said bureau, and in 1911 was appointed assistant to the Secretary Walter L. Fisher, who was then Secretary of the Interior. He resigned in 1912.

From 1903 until 1907 he was associated with William J. Burns and Francis J. Heney in investigation and prosecution of so-called Oregon land fraud cases. He had charge of all papers and documents in connection therewith and is thoroughly familiar with the investigation and prosecution of said cases.

He has read, and is familiar with, the charges of irregularities, against William J. Burns, contained in the letter of George W. Wickersham, former Attorney General, dated May 10, 1912, to the President, recommending pardon for Willard N. Jones, one of the land fraud defendants.

From his personal knowledge he states that there was not and is not now any evidence before the department to substantiate these charges, particularly the charge that persons whose names were proposed as jurors were investigated by Mr. Burns or anyone connected with the prosecution prior to the filling of the jury box from which the grand and petit juries were drawn, for the purpose of controlling such names as were to be put into the jury box. All the evidence, much in documentary form, clearly showed to the department that the investigation of jurors, a common practice then and now, was made by the prosecution after the names were placed in the box. There was an abundance of evidence before the department at the time the Attorney General's letter was written to the President to substantiate this fact—letters written by Mr. Burns, dated subsequent to the filling of the jury box, of which the following is an example:

"The purpose of the investigation is to ascertain if the person investigated is of a character that he can be depended upon to give the case a fair and impartial trial upon the evidence."

He knows, of his own knowledge, that there was a great number of names in the box, of persons very objectionable to the prosecution, and that many jurors drawn for the trial juries were challenged for cause and peremptory challenges were used against them by Mr. Heney. He recalls that the attorney for the defendants in one of the Jones cases arose in open court and stated that he had six personal friends on the jury.

Affiant was interrogated by the pardon attorney in the latter part of 1911 while "Assistant to the Secretary" as to some of the general charges, but not as to the specific matters embodied in the Attorney General's report. He suggested to the pardon attorney that the voir dire of the trial juries be examined to determine the question of fair juries.

As to the intimidation of witnesses, there is absolutely no truth in such charge, because the affiant was present and took many statements from witnesses and knows of his own knowledge that there is absolutely no ground for such charge. In fact, of 10 affidavits filed by Jones in this matter, 8 of the affiants were deeply involved in the land frauds themselves, and 5 of them were indicted in connection therewith. Affiant would have been perfectly willing to have made affidavit to the facts as he knew them, which would not have substantiated the general charges, nor the specific charges, but he was not asked for such affidavit.

The specific matters in the Attorney General's letter, such as the telegram from Mr. Burns to W. Scott Smith, the allegation that Sorenson was used by the prosecution to mislead Jones in selection of jurors, and the MacArthur affidavit, were not called to the attention of the affiant, as these matters came before the department after December, 1911, and were promptly embodied in the pardon attorney's final report to the Attorney General, on which his letter was based. In fact, the MacArthur affidavit was received in the department April 12, 1912, and was embodied in the pardon attorney's final report, dated April 13, 1912, one day after its receipt. Therefore, no opportunity was given anyone connected with the prosecution to comment on this affidavit. Furthermore, the affidavit on its face contradicts itself, the latter part of it not being embodied in the Attorney General's letter, in which Mr. MacArthur states that he made reports on jurors to one Marvin, a special agent of the General Land Office for months, and a year after the jury box was filled. This statement by MacArthur is not at all consistent with his alleged conversations with Mr. Burns in July and September, 1905. Affiant knows of his own knowledge that Mr. MacArthur came voluntarily and asked for work, likewise asking that his brother be given employment. Documentary evidence before the department at the time the Attorney General's report was written shows that Mr. MacArthur himself was one who used such condensed comment as "sons of bitches" as to jurors, as will be seen from the following, in a letter from Mr. MacArthur to Mr. Burns, dated July 24, 1905:

"There is one man on the Marion County list reported O. K. at present that I am afraid of \* \* \* C. M. Mackay only gave me a list of doubtfuls and sons of bitches."

Mr. MacArthur was here reporting on jurors in the old jury box.

As to markings upon lists of prospective jurors, such as a "circular check" which the Attorney General refers to, the department had been previously advised as to similar markings, such as "O. K. go in" and "go in," showing that such notations merely meant that these names were to go in lists that were being prepared after the jury box was filled for investigation, and the pardon attorney admitted that such notations did not appear to have the significance that was first attached to them. Nothing was asked about "circular checks," as it could have been explained in the same manner.

There was ample evidence before the department at the time the Attorney General's report was written to show that the construction put upon the telegram of Mr. Burns to Mr. W. Scott Smith was not the proper construction. There was no evidence before the department to warrant the construction that was placed upon it.

Affiant knows of his own knowledge that Mr. Burns was not in Oregon at the time of the Jones-Sorenson trial, and, therefore, could not have been connected with the charge that he was using Sorenson to influence Jones to select jurors that he otherwise would not have selected. The department should have known, irrespective of Mr. Burns's absence, that this charge had no weight, for if the other charge that no names of jurors objectionable to the prosecution were in the jury box, it would have done Jones little good to object to any of them.

Affiant knows of his own knowledge that Mr. Burns has, on repeated occasions, made efforts to examine the papers and documents on which the Attorney General based his report so that he could make a complete, detailed reply thereto.

Affiant was present at a hearing before the pardon attorney in December, 1917, when these charges were referred to in connection with a hearing to revoke the license of the Wm. J. Burns International Detective Agency of New York, brought before the comptroller of the State of New York. At this hearing the pardon attorney made the statement that "he may have made a mistake" and that he thought he "had been a little bit harsh on Marsh." Affiant was then ready, willing, and anxious to explain many documents in the case, but when he was suggesting questions to the attorney for Mr. Burns to ask the pardon attorney, such as why it was necessary to wire, on June 6, 1912, to Charles Carey, the partner of one of the defendants, F. P. Mays, but not a defendant himself, that the pardon had been granted, he was asked to remain outside the hearing room.

Affiant is ready and willing at any all matters and documents affecting

ed, under oath, as to any and can show that the evidence

before the department at the time the Attorney General's letter was written, absolutely does not justify the recommendation for pardon made by the Attorney General; that there was no evidence before the department to warrant the "conjectures" and conclusions of the Attorney General, but on the contrary, there was an abundance of documentary evidence that fully warranted a directly opposite conclusion.

An unbiased and unprejudiced examination of the record will not support any of the charges against Mr. Burns.

A full and detailed answer to Attorney General Wickersham's letter, by Mr. Francis J. Heney, appears on page 2218, part 5, hearings before the House Committee on Interstate and Foreign Commerce, third session, Sixty-fifth Congress, on House bill 13324.

IRVIN RITTENHOUSE.

Subscribed and sworn to before me this 19th day of December, 1922.

J. ARTHUR RUSSELL,  
*Notary Public.*

There also follows a telegram from Mr. Francis J. Heney, dated December 23, 1922:

LOS ANGELES, CALIF., *December 23, 1922.*

Congressman VOLSTEAD,  
*Chairman House Judiciary Committee:*

My attention has just been called to fact that George W. Wickersham testified before your committee on 13th or 14th instant as follows: "I sent for Mr. Heney and submitted the report to him. I had a personal interview with Mr. Heney before it was sent to the President and he read it and made no comment upon it. This occurred three or four weeks before the pardon was granted." Wickersham did not submit nor show to me at any time his report or letter to President Taft recommending pardon of Willard Jones and I had no conversation whatever with Wickersham at any time during year 1912 or thereafter. Am mailing affidavit covering this statement and respectfully request your committee to permit same to be made part of this report.

FRANCIS J. HENEY.

Mr. THOMAS. Who are these gentlemen that are making these affidavits? Did they have any connection with these land-graft cases in Oregon at any time?

Mr. HOWLAND. Well, Mr. Marsh was the clerk of the courts at the time that the trials were held in Oregon, so he was familiar with all of those transactions. And Mr. Cobb was Assistant Attorney General. He had some connection with it.

Mr. Fisher was an assistant and had held some office in the Department of the Interior at that time. He was Secretary for a short time of the Interior Department.

They all bear on that subject.

Mr. THOMAS. I wanted to know what knowledge they had.

Mr. HOWLAND. Yes; I know.

The CHAIRMAN. Is that all?

Mr. HOWLAND. Yes; that is all.

The CHAIRMAN. We will now take a recess until half past two o'clock.

Mr. THOMAS. Why not adjourn until to-morrow?

Mr. MICHENER. What are we going to do at half past two?

Mr. JEFFERIS. I think that we ought to try to clean up as far as we can, because some of the members want to go away for Christmas.

The CHAIRMAN. If there is no objection we will meet at 2.30 o'clock this afternoon.

(Whereupon, at 1.25 o'clock p. m. the committee took a recess until 2.30 p. m. of the same day.)

## AFTER RECESS.

WEDNESDAY, DECEMBER 20, 1922.

The committee met, pursuant to the taking of a recess at 2.55 o'clock p. m., Hon. Andrew J. Volstead (chairman) presiding.

**IN RE INVESTIGATION OF SPECIFICATIONS NOT SUPPORTED BY EVIDENCE.**

The CHAIRMAN. The committee will come to order.

Have you any of the employees of the Department of Justice here that can explain what has taken place in regard to these charges?

Mr. HERSEY. The charges or the evidence offered?

Mr. HOWLAND. Of course, we do not like to be placed exactly in the position of explaining conduct which somebody criticizes, but as we have said right straight along, we want to bring to the committee everything that they are interested in and want to inquire about.

The CHAIRMAN. Well, take, for instance, specification No. 2.

Mr. HOWLAND. How is that?

The CHAIRMAN. Take, for instance, No. 2, that particular matter.

Mr. HOWLAND. Pardon me, but that is the Nobbie matter?

The CHAIRMAN. No; George Meyers.

Mr. HERSEY. Has any evidence been offered on No. 2?

The CHAIRMAN. No; but there is the charge.

Mr. HERSEY. Well, I am, for one, against making a man explain those charges.

Mr. JEFFERIS. That is No. 12, subdivision No. 2?

The CHAIRMAN. There is a charge there that certain wealthy parties——

Mr. BIRD. What page, 69?

Mr. HOWLAND. That charge in regard to the Meyers matters, as I understand it, has been withdrawn even by Mr. Keller. Undoubtedly he did not intend to press it.

Mr. MONTAGUE. What page is that; what specification?

Mr. HOWLAND. Specification No. 12.

Mr. MONTAGUE. What page?

Mr. HOWLAND. You can not refer to the page numbers because you have got so many different prints. Specification No. 12, subdivision No. 2.

Mr. HERSEY. What book is that?

Mr. HOWLAND. This is a committee print. The specification is in this on page 57.

Mr. FOSTER. In the other it is on page 69.

Mr. HERSEY. Now, Mr. Chairman, before we go any further I move that the committee do not, as a committee, call on the Attorney General to present any evidence on his part, in his defense, on any charge or specification where there has been no proof offered on the part of the prosecution, no evidence whatever.

The CHAIRMAN. My idea is that that is not the correct attitude for this committee to take.

Mr. HERSEY. Well, put it to a vote of the committee and find out what the committee wants to do.

Mr. BIRD. It is our duty to invest; make a report, and it does not make any difference——

Mr. MONTAGUE (interposing). Mr. Chairman, I do not see any use of us investigating a negative.

Mr. HERSEY. The committee is not making any charges.

The CHAIRMAN. Wait a minute. Affidavits have been offered.

Mr. MONTAGUE. And the affidavits have been answered.

The CHAIRMAN. I know.

Mr. MONTAGUE. No proofs have been submitted on some of these.

Mr. HERSEY. No affidavits or evidence.

Mr. MONTAGUE. Now, what shall we do?

The CHAIRMAN. My idea is that we proceed.

Mr. HERSEY. I object to any investigation. I think that we could carry on an investigation indefinitely without arriving anywhere.

The CHAIRMAN. We ought to at least proceed far enough to find out in a general way whether anyone really had any testimony to be presented. I think that that will be sufficient.

Mr. GOODYKOONTZ. Mr. Chairman, what are we to do with these lumber charges; the specifications were prepared by Mr. Untermeyer in New York?

Mr. JEFFERIS. Yes.

Mr. GOODYKOONTZ. Now, he has been trying this case through the newspapers at long distance. Has he indicated any purpose of coming here at any time to sustain the allegations he has made here?

The CHAIRMAN. No.

Mr. FOSTER. I was wondering whether there might not be a middle ground on which everybody could agree. I am disposed to agree with Governor Montague on the legal aspect, but if the chairman or some of the other members have some one specification upon which they might wish to interrogate the department about, without committing us to a policy as to the work the Attorney General's office is doing, they could put in a defense on them and perhaps that would offer any of the members an opportunity to ask any questions on any proposition that they desired to, and we could have them go ahead on that.

Mr. JEFFERIS. Mr. Chairman, I do not really see where they can really make any defense unless the affidavits are offered.

The CHAIRMAN. I do not think that we should stop now, but should proceed.

I think that it might be satisfactory to the committee and to the Congress and to the country to have a general statement here as to what these charges are and what the facts are in the way of the preparation and the prosecution of these different cases.

Mr. GOODYKOONTZ. We have come to an issue here. The specifications, or what you might term the alleged articles of impeachment, have been filed, and answers have been filed, and, of course, that traverses the specifications. If the Attorney General wants to go further than he is required to go, of course, that is a matter to consider, but it does not seem necessary to me.

Mr. HERSEY. Suppose that we are going to say that we want to hear him. I do not think that it is fair to the Attorney General to call on him to furnish the activities of his office to negative what he has answered in his own denial. We have not had sufficient proof of these specifications and charges.

The CHAIRMAN. I think that you are entirely wrong, if you will pardon me for disagreeing with you. Here is the situation: These



charges have been made. We have admitted the answers, not because there is any provision of law for an answer. It was thought it would help to guide us in the investigation.

The charges still stand, and when we are asking for anybody in the department to give testimony we are investigating the charges, the very thing we are charged with doing.

The theory that this is a complaint and answer is, in my judgment, entirely wrong. Nothing has been proven by reason of the fact that Mr. Keller dropped out at all. Whether he had ever shown up here or not made no difference as to our duty to investigate after the charges had been made. The charges have been made, and they have been referred to us for investigation, and I think it is our duty to find out what there is to them.

Mr. MONTAGUE. My opinion of your position in that respect is that you are entirely correct, but you omit one important fact, that you must prove the charge first and then we, who investigate them, we must investigate the charges, not answer the charges. I do not say that it is necessary for Mr. Keller to answer the charges. If you can find any other witness, if this committee can find any witness that can sustain these charges, I am perfectly willing to ask that witness to come here, or to exercise the power of the committee to bring them here if we feel that they can prove the charge. Why should we prove exculpation of that charge?

The CHAIRMAN. My theory is that it is our duty to undertake to investigate the charge by calling on the men who have been engaged in carrying out the matters complained of, and thus prove or disprove the charge by the employees in the department who know what the Attorney General has done.

Mr. MONTAGUE. Then, we are going into the process of discovering the facts.

The CHAIRMAN. We are expected to do that.

Mr. MONTAGUE. Of course, I do not desire to interpose an objection.

The CHAIRMAN. We can proceed just as was done in the Archbald case. The committee put everybody on the stand that they could find who knew anything about the case. They put them on and cross-examined them and found out whatever they could.

Mr. FOSTER. The chairman has in mind, still conducting what he has called a preliminary investigation, to determine the probable cause.

The CHAIRMAN. I do not think so. I think that we have all of the power that we could have had if the House had passed the resolution, because the resolution simply gave us the power to subpoena witnesses and send for papers.

Mr. FOSTER. I am not discussing the power. That is a statement that was made by the chairman when we started this investigation.

The CHAIRMAN. Yes; that was before we had this testimony.

Mr. FOSTER. We had everything furnished that we know now in this case. It passed in the original form.

Mr. CLASSON. What could we do under the resolution?

The CHAIRMAN. We have the power to make a report on the impeachment charges without going to the House.

Mr. CLASSON. Without passing

?

The CHAIRMAN. Without passing the resolution. We have all of the power that we would have had if that resolution had passed. It is not necessary that we should pass this resolution to give us power to report on these charges.

Mr. CLASSON. I thought that this resolution was referred by the House for the purpose of reporting on the resolution.

The CHAIRMAN. I do not know that we ought to discuss this very much, but here is the situation. This matter was referred to this committee for investigation of the charges made by Mr. Keller.

Mr. FOSTER. When we first took up the resolution we started out to——

The CHAIRMAN. We can report to the House.

Mr. GOODYKOONTZ. Certainly; we must report to the House one way or the other.

The CHAIRMAN. What will we report? Shall we stop our proceedings and report to the House for the purpose of getting more power? We have got everything that we could have gotten under the resolution, because we went back to the House and got the power provided for in the resolution.

Mr. GOODYKOONTZ. The resolution merely——

The CHAIRMAN (interposing). We are here to investigate the charges. We would not even have to have a resolution. If the charges had been made in the House, they could have been referred to us, and we could have reported on them without a resolution.

Mr. GOODYKOONTZ. The resolution is merely ancillary to the impeachment charges. A Member stood on the floor and said, "I impeach Harry M. Daugherty, Attorney General of the United States for high crimes and misdemeanors in office," and then the resolution was only intended to give us plenary powers to subpoena witnesses and swear them and to bring documents here and other testimony.

The CHAIRMAN. That we got.

Mr. GOODYKOONTZ. And here is the case, the gravamen of the case, is the impeachment charges. That is what we are hearing. The resolution is merely a side paper, giving us power, Mr. Chairman, to call witnesses in support of our carrying out the investigation of the specifications.

The CHAIRMAN. What I have in mind is that we ought to go far enough to satisfy ourselves by the examination of the employees in the Department of Justice to determine within reasonable limits whether there was any occasion for these charges, and a good many of them are absolutely without merit as charging in legal form an offense.

Mr. HICKEY. Then, are we not going to the very man against whom the charges have been preferred, and who is on trial, and ask him to supply the testimony?

The CHAIRMAN. Well, we do not ask the Attorney General himself, but we ask the employees of the department. The department is made up of a great many employees.

Mr. HERSEY. The employees of the department having the matter in charge, which is the subject matter of these charges.

Mr. HICKEY. What is that?

Mr. HERSEY. The employees in the department in charge of the subject matter.

Mr. HICKEY. Well, what would be the purpose in getting their testimony?

Mr. HERSEY. We have got a right to ask for it.

Mr. FOSTER. We have got here an investigating committee, where the so-called prosecution has dropped out, and we have just as much right to go ahead as if he had stayed in and finished under the charges.

The CHAIRMAN. There is no question about it to my mind, when you come to take the proceedings that they have had in other investigations of this kind.

Mr. MONTAGUE. Then, Mr. Chairman, if we are going to proceed in that way, I suggest that we proceed in order and take up these charges seriatim.

The CHAIRMAN. So long as we are to proceed, I do not know but what this will amount to the same thing.

Mr. HERSEY. You are going to call some witnesses?

The CHAIRMAN. I am going to call on Mr. Howland, who has offered to furnish us anything that he can, and we will proceed and do the best we can.

Mr. HOWLAND. Is it the desire that we go ahead?

The CHAIRMAN. Yes; I think so.

Mr. HOWLAND. I think that we can do that pretty nearly.

The CHAIRMAN. Of course, I would not imagine that it was necessary to go into those 23 charges, or that they need to be investigated with any great detail. I think that we can ask questions and ascertain whether or not the Attorney General has done anything to prevent proper action being taken, and endeavor to ascertain whether there has been any action in the department to hamper or interfere with, or prevent proper action from being taken in the ordinary course of business of the department.

Mr. HOWLAND. Is it the idea to call witnesses and have the committee examine them?

The CHAIRMAN. If you have got any here we will hear them.

Mr. HERSEY. On specification No. 1?

The CHAIRMAN. On specification No. 1.

#### **TESTIMONY OF HON. C. STANLEY THOMPSON, SPECIAL ASSISTANT TO THE ATTORNEY GENERAL OF THE UNITED STATES.**

(Whereupon C. Stanley Thompson, being first duly sworn, upon examination, testified as follows:)

Mr. HOWLAND. State your full name.

Mr. THOMPSON. C. Stanley Thompson.

Mr. HOWLAND. And your business.

Mr. THOMPSON. Special assistant to the Attorney General.

Mr. HOWLAND. How long have you been in the Attorney General's office?

Mr. THOMPSON. Since September, 1920.

Mr. HOWLAND. The first specification here alleges that the Department of Justice has failed and neglected to bring an action against the Southern Pine Association, a combination in restraint of trade. Kindly give the committee the facts in regard to that matter and as to whether or not that statement is true.

Mr. THOMPSON. That statement is true because a petition in an equity proceeding was filed in court against the Southern Pine Association in St. Louis.

The CHAIRMAN. And is still pending.

Mr. THOMPSON. And is still pending. I might add that that contained an application for a preliminary injunction, but under the instruction of the present Attorney General I went out to St. Louis, together with Mr. Mitchell of the department, to handle that whole hearing, under that application, but we were not able to go into it at that time because of the statement of prejudice against Judge Ferris which had been filed. So he held that he could not proceed; so we were unable to hold the hearings.

Mr. HOWLAND. What has been done with reference to the Federal Trade Commission, with reference to interfering in any way with the activities of the Federal Trade Commission, or destroying the efficiency of that body in connection with any of these matters?

Mr. THOMPSON. Nothing. We worked with the Federal Trade Commission. They made the investigation at the request of the department. They reported on the facts from time to time, and from time to time we have asked them for further work and for the material which they have secured and which they have furnished to the department.

I might state that their reports are merely on facts, and with reference to these lumber cases, they were never acted on by the Federal Trade Commission; but the commission simply reported on the facts developed by field investigators of the conditions.

Mr. HOWLAND. And they are not attorneys, but just field investigators?

Mr. THOMPSON. Yes, sir; and they compile the reports which are merely a summary of the evidence of the material which they collect.

Mr. GOODYKOONTZ. Could you get very far with those reports without the names of witnesses, and having them state what they would swear to, and without knowing what your jurisdiction there was?

Mr. THOMPSON. No; those reports would give an idea as to whether or not it was probable there was a cause for action in each case in which there was an investigation, and if we thought, after going over those reports that they ought to be further worked on, we would proceed to have an independent investigation made by a special agent of the bureau of investigation of the department. As fast as they completed their work, then each matter would be taken up independently for final consideration.

The CHAIRMAN. Has there been—are you through, Mr. Howland?

Mr. HOWLAND. Go ahead.

The CHAIRMAN. No; proceed.

Mr. HOWLAND. Well, I want to ask you, while we are under this specification, the Western Pine Manufacturers Association, and the Virginia-Florida Saw Mill Association, specifications 1 to 11, which are known as the lumber trust cases; I will ask you a general question, with reference to each one of those, as to whether the department has done anything in any way to interfere with the activities, efficiency, or to discredit the Federal Trade Commission.

Mr. THOMPSON. No; nothing at all.

Mr. HOWLAND. And what activities are now under way in the Department of Justice with reference to the whole lumber trust situation.

Mr. THOMPSON. As I said before, in all of those cases that are taken up first the matter is reported on by the Federal Trade Commission,

which sends out the investigators, and in cases where we are satisfied that the law is being violated we have had independent investigations made by our agents to bring the facts down to date and to develop any facts which were not adequately developed by the action and by the reports of the Federal Trade Commission. Several of those investigations have been completed, and the question as to whether or not any action is necessary, and if so, what action should be taken is now under consideration.

Mr. GOODYKOONTZ. It is the duty of the Department of Justice to construe and interpret the statutes as well as to find the facts. The Federal Trade Commission does not necessarily have any bearing on that department?

Mr. THOMPSON. Well, the Federal Trade Commission does not pretend to give any construction of the statute or laws, but simply reports on the facts.

Mr. JEFFERIS. And those reports were from field agents?

Mr. THOMPSON. By the field agents.

The CHAIRMAN. I do not know but what we have covered it.

Mr. MONTAGUE. In other words, do I understand you to say, Mr Thompson, that the Federal Trade Commission makes certain investigations?

Mr. THOMPSON. Yes, sir.

Mr. MONTAGUE. The result of those investigations is submitted to the Department of Justice.

Mr. MONTAGUE. The Department of Justice not only goes over the matter submitted, but makes independent investigations to determine whether or not they can sustain a proceeding that may be instituted for relieving the situation complained of?

Mr. THOMPSON. Yes, sir; I might also call the attention of the committee to the fact that there is shown in those specifications where there are many dates on which the reports were sent over. The first dates which they give there are merely the dates of preliminary reports, and in each one of these lumber investigations the reports came over in a number of volumes and generally they came over at different dates. So it is manifestly impossible to arrive at any conclusion as to whether or not an action is warranted until the final reports come over, and it is shown in the specifications that the final reports in some of those matters only came over a few months ago, and in many instances the last evidence on which there was any report was two to three years old, making it impossible to arrive at any definite conclusion as to whether an action is warranted until further investigation is made.

The CHAIRMAN. Now, you may go on and ask some more questions if you wish.

Mr. GOODYKOONTZ. These reports were voluminous, were they not?

Mr. THOMPSON. Most of the reports were in from two to seven or eight volumes of typewritten matter; the actual evidence secured by the Federal Trade Commission went from 15 to 50 volumes of typewritten matter, containing copies of letters and other documentary materials.

The CHAIRMAN. How large was the average volume?

Mr. THOMPSON. The volumes, I would say, would contain about 300 pages—typewritten pages. The cases which we have considered taking action, we have the original material, rather the original copies, so we have only the report to go



over but the 20 to 50 volumes of copies of matters secured by the investigation.

Mr. HERSEY. Let us understand. Does the Federal Trade Commission make a final report or a preliminary report from time to time on certain cases? Is the first report a final report, or do they make several reports?

Mr. THOMPSON. Several reports, frequently covering different phases of action. They send reports over in volumes, or chapters, covering different phases.

Mr. HERSEY. Well now, you could not, as a practical proposition, take up the matter in the Department of Justice until you got all of the final reports from the Federal Trade Commission on the case?

Mr. THOMPSON. Of course not.

Mr. HERSEY. And, when you got the final report, as I understand, the procedure was to place or to send some attorney of the department or agent of the Department of Justice to study the report, make an independent investigation on behalf of the Department of Justice, before you brought suit?

Mr. THOMPSON. Yes, sir.

Mr. SUMNERS. I just want to ask you if the suit to which you referred a moment ago covers each of the concerns?

Mr. HOWLAND. Under specification No. 1; that is what you mean?

Mr. THOMPSON. The suit I refer to covers the Southern Pine Association.

Mr. FOSTER. Let me ask you if what you said awhile ago refers with equal force to each of the specifications from 1 to 11?

Mr. THOMPSON. Well, each of those specifications, 1 to 11, inclusive, is a separate association, and suits instituted would have to be separate suits.

Mr. BIRD. Have any other suits been instituted other than the one against the Southern Pine Association?

Mr. THOMPSON. No, sir; we have been awaiting a satisfactory investigation, making an independent investigation of several others, which was just recently completed, and the action to be taken by the department is now under consideration.

Mr. MONTAGUE. How long is it after the papers reach your office before suits are instituted?

Mr. THOMPSON. Well, they have been coming in ever since—well, they started in the summer of 1920 and they have not finished yet.

Mr. MONTAGUE. I just wanted to get an idea. One of the charges is delay. I want to know about that charge. The charge consists of two elements—two items—first, delays; and second, refusals to prosecute. I would like to have you explain to the committee your activities, so as to determine whether or not there has been any unnecessary delay.

Mr. THOMPSON. Well, I tried to cover that before.

As each report comes in from the Federal Trade Commission it is considered. All of those lumber matters are referred to me, because they are very closely related and need to be considered by the same person.

Mr. MONTAGUE. What is the procedure, if you can state, as far as possible, when these records reach your office?

Mr. THOMPSON. Why, we always read the reports over practically as soon as they reach the office. As I said, those reports are so large that it takes a couple of weeks to read through them sometimes.

Mr. MONTAGUE. I appreciate that.

Mr. GOODYKOONTZ. I might state in that connection that the Department of Justice—I do not know whether it was this administration, or the past, instituted in one of the Federal courts in Tennessee, a suit, a bill, was brought to dissolve one of the lumber associations, probably the hardwood association, as being in contravention of the antitrust laws of the United States. Do you know anything about that suit?

Mr. THOMPSON. That was against the American Hardwood Manufacturers Association.

Mr. GOODYKOONTZ. What is the status of it?

Mr. THOMPSON. That was appealed to the Supreme Court, and has been decided by the Supreme Court in favor of the Government. On that pendency, that appeal, was one reason for not immediately trying a number of other suits, which probably might have been filed. Still, they covered very similar points, and all of these associations covered by these specifications, that is 1 to 11, have very largely modified or discontinued their activities on account of the decision of the court in the hardwood case.

Mr. GOODYKOONTZ. When did the Supreme Court announce its decision, or enter its final decree in that case?

Mr. THOMPSON. I think that was last December.

Mr. JEFFERIS. Mr. Thompson, speaking of these reports of the Federal Trade Commission, I understood you to say that they were not a report of the body known as the Federal Trade Commission to your office, but that those were reports of field agents of that body; is that right?

Mr. THOMPSON. Yes, sir. You see, the original investigations were made at the request of the Department of Justice under the authorization given by the Federal Trade Commission law. The Federal Trade Commission used a number of field agents in making investigations, and then the reports were compiled by those agents that made the investigation, and were transmitted to the Department of Justice.

Mr. SUMNERS. Mr. Chairman, I would like to continue with this witness for just a few minutes, if I may.

It is not clear to my mind as to this procedure. The Federal Trade Commission makes these reports, and now you have proceeded to file a suit in one case.

If this next question will in any way embarrass you, I hope that you will not answer it; if it will in any way embarrass your department, in your judgment, I hope you will not answer it. Here are nine other cases, I believe. You have brought suit in one. Do you care to make any observations with reference to the other nine, or would you prefer not to, as to why you have not brought suit in the others? As I understood your general statement, it was to the effect that when these reports come in, these suits could be filed. Why could not the suits be filed—

Mr. FOSTER. Just a minute—

Mr. SUMNERS. Let me complete my question.

Mr. FOSTER. Just a minute—

Mr. SUMNERS. Let me get my state-

Mr. FOSTER. Does the gentleman from Texas know whether he understood the witness's answer or not, a minute ago, when he said that most of these cases were held up pending the decision of a legal proposition in one of the cases?

Mr. SUMNERS. These other cases are being withheld pending the decision in the other?

Mr. THOMPSON. No; I did not say that.

Mr. SUMNERS. I did not think that you said that at first.

Mr. FOSTER. I did not say it that way, either.

Mr. THOMPSON. I said that would be one reason for not proceeding, if the facts had been such as to warrant us in proceeding at that time; but when a case came to the department we felt that we ought not to proceed until we had made a thorough, independent investigation.

Mr. SUMNERS. That is what I wanted to know.

Mr. THOMPSON. In order to bring the facts down to date, and in order to develop the facts more fully, if that were possible.

Mr. FOSTER. These other cases were in process of investigation?

Mr. THOMPSON. Yes, sir.

The CHAIRMAN. Is that true with all of those lumber cases, that they are in process of investigation——

Mr. SUMNERS. Now, Mr. Chairman, I do not want to insist upon my rights to examine this witness——

The CHAIRMAN. I beg your pardon, I thought you were through.

Mr. HERSEY. I understood that you were through.

Mr. SUMNERS. I am not. I beg your pardon, Mr. Chairman. I should not have said what I did.

The CHAIRMAN. Go ahead.

Mr. SUMNERS. What I want to get at, if I can avoid a little interference here, is, out of these 10 cases that were taken up at that time you brought suit in only 1. Now, then, you do not want us to understand that the others will take an equal amount of time for each one of these cases, stringing them out one after the other?

Mr. THOMPSON. No, sir; they will not be strung out one after the other. We have been working on them at the same time, as fast as we got reports from the Trade Commission.

Mr. SUMNERS. And when the Trade Commission gets their reports in in the other cases, you will proceed with them?

Mr. THOMPSON. Yes, sir. The Southern Pine Association report was the first one which we made an investigation of, and the first one that they reported on.

Mr. SUMNERS. That is all.

Mr. CHANDLER. What do you mean by an independent investigation? Do you mean that the department is making an independent investigation regardless of any other statements or any other investigations that are made by the Trade Commission or anybody?

Mr. THOMPSON. Oh, no; the agents of the department who have been assigned to that work have been furnished copies of the reports by the Federal Trade Commission and use those as a basis to bring the investigation down to date and develop certain points which it is thought are in need of further development.

Mr. GOODYKOONTZ. Some of the reports, statements upon which the reports are predicated, have been taken three years ago?

Mr. THOMPSON. Yes, sir. The work of the Federal Trade Commission in some of these cases was finished, I think, as early as the summer of 1920, so you see, when some of the reports only get in in the summer of 1922, that most of the facts and material is pretty old to predicate any action on.

Mr. BIRD. Do you know whether there has been any change in their method of doing business since the decision of the Supreme Court in that hardwood manufacturing case?

Mr. THOMPSON. Yes; we know that a number of associations have materially changed their method of doing business. I might state that the reports of the Federal Trade Commission, in my opinion, do not show any basis for action against several of the associations. So it may not be necessary to do any further work on them. We study their reports and work on those which show the most need for further attention.

Mr. GOODYKOONTZ. After the decision of the Supreme Court, did these people do anything to bring themselves in harmony with that decision?

Mr. THOMPSON. Yes; some of them; I think most of them have more or less modified their actions.

Mr. GOODYKOONTZ. That matter is being investigated now?

Mr. THOMPSON. It is being investigated now to determine just what their present methods are.

Mr. FOSTER. As a matter of fact, was not the case that was selected, and filed by the department, and selected to go to the Supreme Court designedly for the purpose of getting a construction by the Supreme Court, and for its use in connection with other cases pending in the department.

Mr. THOMPSON. Yes. Of course, I did not select that case, but—

Mr. FOSTER. That is the way that it was worked out?

Mr. THOMPSON. Yes; it was largely used as a test case.

Mr. FOSTER. Yes; and as a result of the decision in that case a great many of the other companies proceeded to modify their course of action in conformity with that decision?

Mr. THOMPSON. Yes, sir.

Mr. SUMNERS. So, then, are we to understand that they having modified their course of action in conformity with that decision, there will not be any prosecution—is that what you want us to understand?

Mr. THOMPSON. Yes; in some I am quite sure there will not be prosecutions, at least if my recommendations are accepted.

The CHAIRMAN. You may go on with the witness.

Mr. GOODYKOONTZ. Does this Southern Pine Co. do business in Texas?

Mr. THOMPSON. I think so.

Mr. GOODYKOONTZ. Of course we have not got any pine down in West Virginia. It is all hardwood down there.

Mr. HOWLAND. Mr. Thompson, I will turn now to subdivision 13, which is the National Implement and Vehicle Association, and certain other associated concerns, with charges that the Federal Trade Commission sent over certain testimony to you or to the Department of Justice, and that notwithstanding that failed to take action. Can you give the committee the information on that subject?

Mr. THOMPSON. The principal elements of error in that is as to the date when it was called to the attention of the Attorney General. They said that it was called to his attention in, I think, September, 1921. The only thing that has ever been sent to the department was in September, 1920, when the Federal Trade Commission sent over a copy of the report which they had made to the Senate in May of that year in response to a Senate resolution.

As a matter of fact, that report was considered by the department at that time, and it was considered by Mr. Mitchell, who was then connected with the department. He gave the report to me and asked me if I would go over it, and together with him, which I did, and no formal action was ever taken. But, I know, as a matter of fact, that that was considered as a closed case in the Department of Justice before the present administration came in.

Mr. HERSEY. Why was not action taken?

Mr. THOMPSON. Because, in the opinion of both Mr. Mitchell and myself, the report did not disclose any basis for action at that time. The report itself showed that the principal activities of the implement manufacturers association' which the report objected to as illegal had been discontinued by the association in 1918, which was before the department's investigation was started.

Mr. JEFFERIS. Who was Mr. Mitchell?

Mr. THOMPSON. Mr. Mitchell was a special assistant to the Attorney General. He had been in the department for quite a number of years. I do not know just how long.

Mr. JEFFERIS. So, that was closed up before Mr. Daugherty's administration began.

Mr. THOMPSON. Yes, sir.

Mr. SUMNERS. Is it fair to say that that is the policy, that when these corporations have been violating the law, after you begin an investigation, then if they decide that they will be good from that time on, that is canceled off, and they go ahead on their good behavior?

Mr. THOMPSON. I think that I can state almost the general policy in any such a case as that, that they would be required to consent to a decree being entered in court so that it would be a matter of record and could be enforced against them afterwards.

The CHAIRMAN. How about 14?

Mr. GOODYKOONTZ. If they have abandoned their illegal procedure, you would hardly have any grounds for suit in the department?

Mr. THOMPSON. No, not if they abandoned them before the investigation was started, and so shown evidence of good faith.

Mr. HOWLAND. On No. 14, this witness is not the one that we will call, but I think that we can ask him in regard to No. 18. Mr. Thompson, No. 18, is with regard to the Maple Flouring Manufacturers' Association. Are you familiar with that?

Mr. THOMPSON. Yes, sir.

Mr. HOWLAND. The charge is this, that the Federal Trade Commission sent over to you reports on December 15, 1920, that that association had been violating the law by entering into combinations, etc., and that notwithstanding this evidence in the Department of Justice, they failed to prosecute, etc. State your activities in regard to that.



Mr. THOMPSON. The activities of that association were considered very fully after the report came in and the department contemplated taking action against them, but before we were ready to do so they represented to the department that all of the objectionable activities had been discontinued, and so no action was taken at that time.

Recently there have been further complaints against that association, and an investigation has been made by special agents of the Bureau of Investigation and their reports have just been received a short time ago and they are being considered as to whether or not action will be taken under that investigation.

Mr. SUMNERS. May I ask a question there?

Mr. HERSEY. How long ago did you get those reports?

Mr. THOMPSON. I think about a month ago.

Mr. SUMNERS. Now, in this particular case, when they discontinued illegal action, and you decided not to press the matter further, did you have an agreed judgment in that case?

Mr. THOMPSON. No; there was none in that case. That was, however, before the present administration came in. It was in January, 1921.

Mr. SUMNERS. Of course, Mr. Daugherty would not be responsible for anything that happened then.

Mr. HOWLAND. May I ask the witness now with reference to subdivision No. 22, which seems to be a charge of failure to prosecute the Goodman Manufacturing Co. and others, which was said to be a combination existing in restraint of trade, notwithstanding that the Federal Trade Commission had forwarded evidence to the Department of Justice. What do you know about that?

Mr. THOMPSON. Well, that matter has been under very careful consideration. The principal question there is a legal one, involving the right to more or less pool patents, and to enter into various agreements with reference to the prices at which the patented articles manufactured by these companies can be sold. It is a very involved matter, because there are some 50 or more patents concerned, and as I said, more or less a legal matter on a point on which there is very little authority.

We are negotiating, or rather consulting with the attorneys representing the interests, in order to see if we can reach a common basis as to what the law, applied to the facts, is. It may be possible that there will be a question that will have to be litigated in order to determine that point of law; but the matter has been receiving very constant and very careful consideration.

Mr. SUMNERS. Mr. Chairman, I think that this matter has progressed sufficiently now for the committee to discover the character of the testimony which we can hope to get.

The CHAIRMAN. I must disagree with you; I think that we ought to have sufficient information to give us a general impression at least as to whether or not there is any basis for these charges.

Mr. SUMNERS. This occurs to me to be a fair statement of our situation: I assume that there is not a member of this committee that has enough information to interrogate this witness, or any other witness being presented from the Attorney General's department, to discover any fact not voluntarily stated by the witness, and these matters in regard to \_\_\_\_\_ which has been intro-

duced, it seems to me, would not create against the Attorney General any presumption.

I merely make that observation.

From this time on, this hearing, in so far as its effect is concerned, it seems to me can be considered only as a body receiving facts.

So far as I am concerned, I am not interested with any further proceedings with reference to this character of testimony. I understand the attitude of the gentleman representing the Attorney General. He is here in attendance with his witnesses, to enlighten the committee. That is the only capacity, and the only reason that they are here. I do not know how much enlightenment the other members are getting.

Mr. CHANDLER. I would like for the testimony to continue. I think that it is very interesting.

Mr. HERSEY. I certainly do not want to stop now. Let us go on and hear what they have got.

Mr. CHANDLER. We should keep it up until we get through now.

Mr. HERSEY. I am willing to sit here for three or four weeks, if necessary.

Mr. CHANDLER. It is very interesting.

Mr. SUMNERS. All right.

Mr. HOWLAND. That is all.

(Witness excused.)

#### TESTIMONY OF HON. WILLIAM HAYWARD, UNITED STATES DISTRICT ATTORNEY, NEW YORK CITY.

(The witness was sworn by the chairman.)

Mr. HOWLAND. Colonel, will you give the stenographer your full name and present address and occupation?

Mr. HAYWARD. My name is William Hayward. I am a resident of New York City, and at present am United States attorney for the southern district of New York, having been appointed in June, 1921.

Mr. HOWLAND. Generally known as "Colonel Bill."

Now, will you turn to specification No. 2, Mr. Hayward?

Mr. HAYWARD. Yes, sir.

Mr. HOWLAND. That specification alleges in substance that the Lockwood Committee, which has been investigating certain matters in New York City under authority of the Legislature of the State of New York, turned over to the Department of Justice, and to you as the local representative in that district of the Department of Justice, certain information; that notwithstanding that fact no action has been taken looking toward the prosecution of companies and corporations and associations where you had full evidence handed to you by this Lockwood Committee. I want you to tell the committee the facts in regard to that matter, as known by you personally.

Mr. HAYWARD. The Lockwood Committee was a committee, a joint legislative committee of the State of New York, which had been conducting an investigation for about a year, as I recall it, prior to the change of administration and prior to the Attorney General's appointment as head of the Department of Justice, or prior to my appointment as district attorney in New York City.

I know all that the public knew of the valuable work of the Lockwood Committee, and perhaps more because I had been asked by the

legislative committee itself to become its counsel, or one of its counsel, and was unable to do so because of other professional engagements. I naturally followed it more closely on that account.

Almost immediately after my appointment I had numerous interviews with the counsel of the Lockwood Committee, in which he told me that a number of the trade associations and building material associations which the Lockwood Committee had investigated had shown by their activities that they were nation-wide, and that in his opinion a great many of them had violated the Sherman Antitrust Act as well as the Donnelly Act, which is the New York anti-trust law, of course limited to intrastate commerce.

I was interested. I felt that a public interest was properly manifested in these matters. I interested the Attorney General in them.

Mr. HERSEY. You mean Attorney General Daugherty?

Mr. HAYWARD. Yes, Mr. Daugherty, my chief. He instructed me to go ahead with the matter and that he would give me all the assistance that he had in his power.

It should be borne in mind that the Department of Justice has always, so far as I know, maintained an antitrust department—I call it that, whether that is the correct name or not—here in Washington; also there has always been a special assistant attorney general stationed in New York, whose duty it has been to investigate and prosecute violations of the Sherman Act. While not under the immediate supervision of the district attorney, he offices with the other assistants to the district attorney and is in close touch with the district attorney.

I explained to the Attorney General that in view of the importance and the number of these alleged combines that I thought it would be better, and the only way to obtain real results, to allow me to create a department of my own, under my immediate direction, in the district attorney's office. The Attorney General authorized me to go ahead. As I say, that was almost immediately after I became district attorney.

I went to the counsel for the Lockwood committee and asked him what they had—

Mr. HOWLAND (interposing). By name who was that?

Mr. HAYWARD. Mr. Samuel Untermyer. I would prefer not to discuss Mr. Untermyer in his absence. I regret not being able to give the committee other statements I would like to make and would make if he were present.

Mr. HERSEY. That is the same Untermyer that has tried this case in the newspapers before the committee.

Mr. HAYWARD. The same Untermyer who has been quoted in the newspapers; yes, sir. All that Mr. Untermyer gave me, except certain statements that he thought cases could be made against many of these people, was a list which contained some 35 or 36 names of various combinations. I think most of them are set out on page 41 of this serial 41 which the members of the committee have before them. Not one scintilla of testimony or other matter of the slightest evidentiary value as bearing on these cases was ever given to me or to the Department of Justice by Mr. Untermyer or anybody else connected with the Lockwood committee had taken many thousand  
The Lockwood committee had taken many thousand  
ony, which were printed

in book form and which we immediately secured. They also had a room full of records, a room as large as this room. We, however, started out.

In forming my staff for this particular work, with the approval of the Attorney General I secured the best lawyers I could find for this work, many of them having been Mr. Untermeyer's assistants in the Lockwood investigation. I secured for my chief of that department Mr. David L. Podell, a gentleman who is here in the committee room now, who was known as a trial lawyer of ability in New York, having tried cases for most of the large firms in the city. I had six or seven of these assistants. The first thing I instructed them to do was to sit down and go over these cases, the Lockwood testimony, and that took two or three weeks, perhaps. Mr. Podell was about to sail for Europe, but came back from the steamer to take this work.

He first took up the case of Alexander & Reid Co. et al. Mr. Podell was appointed in July, 1921, a month after I was appointed. The Alexander & Reid case was the Tile Trust, so called, a combination of tile, grate, and mantel dealers operating in interstate commerce to this extent certainly, that they were importing tile and this other material from various States.

Mr. Podell after a few weeks—a very few weeks, perhaps not more than two—reported that he thought we had a case.

I should like to state, if the committee will allow me, our situation in New York as regards the business of the office, which will throw light on our proceedings and I think would be fair and certainly very brief. I have 41 lawyer assistants on my staff. I have docketed over 10,000 cases, about 3,000 of which are civil cases. Of the remaining criminal cases, at least 4,000 are real cases; the others are the selective-draft cases, which make the number seem larger than it really is, because the selective-draft cases are not proving to be cases that can be prosecuted. I have finished 1,900 of them and only found 2 worthy of prosecution.

Under the statute in our district we are allowed an additional grand jury. It has been the interpretation of the courts that that does not allow more than one additional grand jury, which I regret very much. One grand jury is constantly occupied with the ordinary business which comes into the office, such as mail frauds, and I will not enumerate the various jurisdictions.

We asked for and got the additional grand jury authorized. I have here the tabulation of the number of days since that time that the additional grand jury has worked on these Sherman cases. I can say, however, that practically the entire time of this extra grand jury we have been allowed has been devoted to these cases, occasionally sandwiching in before it some other case.

Before the end of the summer, working with this additional grand jury, we had indicted in the Alexander & Reid case, the title case, so called, 63 defendants, corporate and individual.

I should like to say also that in connection with these long cases, such as a mail fraud case, a Sherman Act case, or any conspiracy case, which takes from four to eight weeks, it is utterly impossible to put such a case before one of our regular district judges. We can never have more than one of those district judges, local judges, assigned to the criminal calendar. It takes just about all he can do to take care

of the jail cases. It leaves us in this situation, that with a long case we must get a judge from other than our regular judges to try it. We are constantly applying for judges. We write personal letters to all the judges in the United States that we know. They come from all over the United States to hold court for us there, and previously to the passage of Congress of this last act allowing the Chief Justice to assign judges from another circuit it was necessary to get a certificate from the presiding circuit judge of the circuit from which a judge came, practically to the effect that he would not be missed in his own circuit. We hope for better results under the new law. Anyhow, in this particular case we got Judge Van Fleet, of California, to come on and hold a term of court for us.

By the end of the summer of 1921, I think within six weeks of the time we took this work up, we had these people indicted. We brought them right on for trial before Judge Van Fleet, and just as we were going to trial the entire defense broke down and they came and offered to plead guilty if we would recommend a fine. We told them we not only would not recommend a fine but that we did not believe in fines; that it was not punishment at all for a rich offender; it is a mere license to allow him to continue to break the law, and if they pleaded guilty it must be with the understanding that we would urge the court to impose jail sentences. Notwithstanding that fact, all of these corporations and individuals, with the exception of two, who were very unimportant, pleaded guilty.

We had also insisted that on a plea the entire facts must be laid before the trial judge before sentence. That was done. It did not take as much time as the trial would have taken to a jury, of course, but it took considerable time, a couple of weeks, to present this picture to the trial judge.

As a result of that I may say that while Mr. Podell and I were working on that case the other assistants and I were going ahead with the others. As a result of that the judge sentenced four of the principal defendants who seemed to be the ring leaders of this conspiracy to jail.

Mr. MONTAGUE. This is the tile case?

Mr. HAWYARD. Yes; Governor. Fines were imposed on the remainder, aggregating \$122,000. The corporations were fined, and these individuals who were sent to jail were fined \$4,000 apiece. They were sentenced to four months in the Essex County Jail, which is located at Newark, where they would necessarily have to go if the sentence was for less than a year and a day.

These four men—who, by the way, were the first defendants in the Sherman case ever put in jail in the United States in 31 years—began serving their jail sentences in December, following the July when we understood the first investigation of the Lockwood committee.

Mr. HERSEY. This last December or a year ago?

Mr. HAYWARD. A year ago now, a year ago this month. The defendants at least thought there had not been any unusual delay in this case.

The next case that we undertook——



## RE SPECIFICATION 12, SUBDIVISION 3.

Mr. HOWLAND (interposing). Just a moment, if you please, there is No. 11, specification No. 11. I think the Nobbie pardon comes right in this connection.

The CHAIRMAN. He might as well state it now.

Mr. HOWLAND. One thousand two hundred and three. In this connection take up the Nobbie pardon.

Mr. HAYWARD. It is found at the bottom of serial 41.

Mr. HOWLAND. Specification 12, No. 3 subdivision.

Mr. HAYWARD. Subdivision No. 3 of specification 12. One of the four defendants who went to jail was the president of the association, in addition to being president of a small title company. His name was Frank H. Nobbie. A great deal of urging had been indulged in by various counsel, both on the judge and on me, not to send Nobbie to jail, because he was tubercular, because he had suffered from time to time with consumption. He looked all right to me and I so told the judge. He certainly was not into the acute stage of tuberculosis at the time of sentence, so, of course, we declined to yield on that matter. Just as soon as these men got into jail over in Newark, my office began to be bombarded with applications for recommendation for pardon in their behalf, on the theory that with men of this character and standing one day's imprisonment in jail was just as good as a year. I did not think that the sentence of Judge Van Fleet was at all severe under the circumstances. I am not swayed by publicity, I believe, in trying to run a law office, but nevertheless the great papers of the United States had taken this question up and have commended Judge Van Fleet and myself, such papers as the Literary Digest, I think, the Saturday Evening Post, and other magazines, for putting teeth in the Sherman Act, so that I saw no reason to exercise clemency in this case, and both Judge Van Fleet and I recommended to the department very strongly against doing it.

Now, I come down to this subdivision No. 3 of this specification because it refers to Frank H. Nobbie, one of the four defendants. The assertion is that one Nobbie, a wealthy terra-cotta manufacturer of New Jersey, was convicted and sentenced to Atlanta for criminal violation of the antitrust law. Nobbie was not wealthy; he was not a manufacturer of terra cotta; he did not live in New Jersey; and he was not sentenced to Atlanta. Otherwise the statement is practically true. [Laughter.] The statement also is made that he had served one week at the time of his pardon. As a matter of fact, he had served 46 days of his four months' sentence, and pardon for him and the other three had been absolutely denied by the Attorney General, the pardon attorney, and everybody on our recommendation.

One day the prison physician of Essex County jail at Newark came to my office. Mr. Nobbie had a sister who was an employee of the board of education of the city of New York. She had gone to a member of the board of education who was a lawyer and he had volunteered to help this girl in the situation that she found herself confronted with, which was, as she claimed, the complete breakdown of her brother's health in the jail. They had induced the prison physician—I forget his name—to come to me—his name was Doctor Martens. Well, he came to my office and told me that Nobbie had been a very sick man since he had gotten over there; that he had had

a hemorrhage of the lungs, producing a recurrence of his tubercular trouble that we had heard about, but had rather ignored previously, and that further confinement would be very dangerous to his health, if not to his life.

I remember distinctly the last thing he said before he left my office was, "If you do not want that fellow to die in jail, you had better get him out."

We refused to take the prison physician's statement on this, and told him to go and get some specialists to examine this man. They did. They went to two tubercular institutions and got the head doctors, plus an X-ray physician, who X-rayed this man; and came back thus reinforced with corroborative testimony of those three doctors concerning his condition.

The man was not a rich man, but he was a reasonably prosperous business man. He was not sentenced to prison to die; he was sentenced for four months. I take the entire credit, gentlemen, for getting Mr. Nobbie out of jail. I put him there, and I got him out, because I thought it was the right thing to do. I think so now; and if I had the same thing to do over again I would repeat what I did. I got him out, not to die, but to give him a chance to get well; he did not have to die to keep any agreement he made with me.

On that state of facts which was presented to me I at once wired Judge Van Fleet, who had gone to California—taking all responsibility for the recommendation. Judge Van Fleet joined with me, basing his recommendation solely on what I had told him—that the man be pardoned; you understand that he could not be paroled, because they can not be paroled under a sentence shorter than six months; the only way it can be done is by a pardon. I got these telegrams from Judge Van Fleet and forwarded them to the Attorney General with this story.

The Attorney General, the next time I was in Washington, which was a few days later, had not heard anything about it; and I reminded him that this case must be in the department; and he sent for Mr. Finch, the pardon attorney, and the Attorney General told the pardon attorney, in my presence, to look into it, and that he thought it was a case that required speedy action.

Mr. BIRD. Colonel, right there, may I ask you, did you become convinced, and are you convinced at this moment, of the bona fide of the claim that this prisoner had tuberculosis, and that it had become active while he was in jail?

Mr. HAYWARD. There is not a question of it.

Mr. BIRD. You were satisfied of the bona fides of it?

Mr. HAYWARD. I am satisfied now, 100 per cent. There can not be any question about it. He had a hemorrhage of the lungs, and I am not a specialist, but I would think that that meant that he had consumption and was in a dangerous condition.

Mr. CHANDLER. I understand, then, that you based your judgment, not on your own observations alone, but that you had the advice of competent physicians?

Mr. HAYWARD. Mr. Chandler, I did not see the man at all.

Mr. CHANDLER. Oh.

Mr. HAYWARD. I would not take the word of the prison physician. I asked him to get other physicians who had not been in contact with the prisoner.

Mr. MONTAGUE. You had three specialists examine him?

Mr. HAYWARD. There were two specialists and an X-ray man. And that made four altogether. And I am very proud of what we did.

Mr. CHANDLER. These experts had had no connection with your office?

Mr. HAYWARD. None at all. They were New Jersey men, and I had never heard of them before, except that I heard that they were specialists and men of good standing in their profession. I thought it would be a wicked thing to deny that man the same justice that we would give to a man who was not prominent or conspicuous, or simply because he was convicted under the Sherman Act.

Mr. CHANDLER. You said that you never saw him. Do you mean after he was sent to prison?

Mr. HAYWARD. I mean afterwards.

Mr. CHANDLER. I remember that you said in the beginning that he looked like a perfectly well man when you put him in jail?

Mr. HAYWARD. I never saw him after that until he was pardoned.

RE SPECIFICATION NO. 2—RESUMED.

Judge Van Fleet had, in imposing these fines, committed the men to jail unless the fines were paid. The fine part of this man's sentence was commuted also by the President, to this extent, that it should remain a judgment against him, but would not require his commitment until paid, that having been part of the original sentence. Mr. Nobbie, within what seemed to me to be a reasonable time after he was released, hustled around and got together his \$4,000 fine and paid it, which I think cleared up all the fines in this case. Now, that is all I can tell you about the Nobbie case.

The other three defendants served their time out and were released at the expiration of their sentences and after they had paid their fines.

The action that we took in that case was characteristic of the others, except that we were not quite so successful in the other case, which was the terra-cotta case. A similar thing happened in that case; they broke down, and offered to plead guilty, under the same terms as the others had. We reserved the same privilege, to urge a jail sentence. There were involved in that case corporations and 12 individuals engaged in the manufacture of terra cotta. All the corporations and but two of the individuals pleaded guilty.

To my great surprise and disappointment, the trial judge, Judge Learned Hand, one of our own judges, who took the pleas, although having indicated his intention to add a jail sentence to some of these, when it was all through—that took us three weeks, presenting to the judge the whole picture; we had exhibits in the court room, and testimony; and it took, then, about two weeks—not then, of course, as long as the trial. He did not send any of them to jail. He fined each defendant \$3,000, which amounted to a fine of \$51,000 in all.

Mr. MONTAGUE. But Judge Hand stands very high as a jurist in New York, does he not?

Mr. HAYWARD. Yes; he does.

Mr. MONTAGUE. He is considered one of your best jurists?

Mr. HAYWARD. Yes, he is; and what I say here is not in criticism of Judge Hand at all.

Mr. MONTAGUE. I understand that.

Mr. HAYWARD. Not in the slightest degree. I say I was disappointed—bitterly disappointed.

Mr. HERSEY. Did you consent, in any talk with the defense or with the judge, that there should be no jail sentence?

Mr. HAYWARD. It was expressly understood that they were to go to trial, or to plead guilty, with the express understanding that we should urge a jail sentence; and we did urge a jail sentence ourselves. Nobody will question our zealousness in that case, I think—certainly the defendants will not.

Now, it should be borne in mind by the committee, in considering all of these matters, what is involved in the preparation of a case for trial under the Sherman Act. These people, many of them, had plants scattered all over the United States, from the Atlantic to the Pacific. We soon found, when we got into them, that Mr. Untermeyer and his committee had absolutely no evidence that was of any value to us, as to the interstate character of the business they had carried on.

Very early I came to the Attorney General and explained that to him. He turned over to me the entire Bureau of Investigation of the Department of Justice, and directed Mr. Burns to give me the best experts he had, the best accountants, the best people he had. And I think that at one time in the investigation of these cases we had as high as 32. We had a man planted in every one of these factories all over the United States, going over their books, making the connecting links, as you have to do in cases under the Sherman law.

I believe that in no instance in our history have cases ever been prepared as quickly or with as thorough support by the Department of Justice and the Bureau of Investigating as we had in this case, and I think that can be established by the results we obtained. Many of these Sherman law cases go on for 8 or 10 years. We tried to get results as quickly as possible, and I think we did.

I do not know whether it would be proper for me to mention the extraordinary pressure—I think I should—the extraordinary pressure that was brought to bear on the Attorney General, to my certain knowledge, to protect the defendant—these powerful manufacturers. As soon as we would begin investigating before a grand jury, they flocked to Washington, to protest against an investigation—these people from these different States.

I want to say that, in every instance, the Attorney General was adamant; never once did he give me any instructions not to go ahead. In fact, on the contrary, he said our rules must be that the companies must be investigated and the guilty must be tried. Mr. Daugherty was as anxious to get jail sentences in these cases as I was. He upheld us in every particular, and turned over everything he had in the department to us, and we were really the spoiled children of the department; we had more help from the department than all other district attorneys in the United States put together. Never once did he decline a request for an assistant or for an investigator that I made of him.

We next took up the Glass case— I know how much you want me to go through these things.

Mr. SUMNERS. Every one of them.

Mr. CHANDLER. They are very interesting. I should like to hear about them all.

Mr. HAYWARD. We drew one indictment against the Johnson Brokerage Co., which was the hand-blown glass people of the country. They were represented by Mr. John W. Davis, and a demurrer was sustained in that case to our indictment.

We reindicted this group again as quickly as we could, within a month or two after that, under the name of the "American Window Glass Co. et al.," bringing in the machine-manufactured glass people.

A case was prosecuted in Chicago, which I am not familiar with, but it was in this same line.

Mr. MONTAGUE. Do you mean the case in which the demurrer was sustained? Do you mean that that case was afterwards reindicted and carried to Chicago?

Mr. HAYWARD. No, sir; we reindicted the same crowd, with some others, on some additional evidence that we got in New York, and that case is coming on in January of next year.

Mr. MONTAGUE. What is the pertinency of your remark as to Chicago?

Mr. HAYWARD. I say, in the answer set out here—in the answer to these specifications—the case of Goodwin-Gallaher Sand & Gravel Corporation, is set out; and that is a Chicago prosecution, and not mine.

Mr. MONTAGUE. Yes; I see.

Mr. HAYWARD. I do not know much about it, except that it was in line with the other.

Mr. MONTAGUE. You do not have that case?

Mr. HAYWARD. No; but we still have the glass case, with a reindictment——

Mr. HERSEY (interposing). You say, there is a new indictment in that case which will be tried in January?

Mr. HAYWARD. Yes; there are 103 defendants in that case.

The cement situation had been dealt with, to some extent, by my predecessor in office, as well as the case of the Iron Erectors' Association, which was a sort of first cousin of the Steel Corporation.

Our predecessors, some special counsel, had presented the Iron Erectors' case to the grand jury and the grand jury had refused to indict. I felt that, until we had disposed of all of these others, certainly I should not try to go back and try to get an indictment which had been denied once—better take fresh cases.

In the cement case, there had been one civil suit and one general indictment, which—I do not care to express my opinion about the validity of that indictment now; but I thought we should have another indictment; and immediately proceeded, as quickly as we could, to get another indictment against the cement group operating in the Atlantic States.

This was a Department of Justice case. I only furnished my assistance to help the department pick the trial jury when it came on for trial. Mr. Fowler, of the Department of Justice, from Washington, and Mr. Shale came to New York and tried that case before a jury before Judge Knox. The case took eight weeks to try. We got an outside judge to take Judge Knox's place on the regular docket, and it resulted in a disagreement, the jury being 10 to 2 for convicting



many of the defendants, and I think 6 to 5 on all—something like that.

I thought the case was properly tried by Mr. Fowler, as did everyone else who watched it. I had no part in it whatever, however, except to pick the jury.

We are getting ready, as I said, to try the glass case.

Now, in the midst of this it seemed that union labor ought not to be exempted from an investigation. We undertook the investigation of the International Bricklayers, Masons, and Plasterers' Union of America. We felt that there had been a violation of the law by that great union, which included 119,000 members throughout the United States. Mr. Podell and the other assistants held repeated conferences, and we found them in an attitude of being willing to obey the law if we could convince them that they had broken the law.

I thought there was a possible question whether, under the Clayton Act, a prosecution would lie or not. I believe, however, it would have. But here were these men scattered all over the United States, 119,000 of them. It did not appear to me to be a suitable case to bring a criminal prosecution in if the same end could be attained in another manner. The conduct that we complained of was this:

There was evidence that they stinted the daily labor of the members—did not allow the bricklayer, we will say, to do his normal capacity; if he could lay 2,000 brick, he was allowed to lay but 1,000, to keep him back, so that all the others could keep up an even plane. They had refused to handle material that came from certain localities or was nonunion made. They also had certain credits—certain favored contractors that they would give labor to—to the exclusion of other associations of builders, or builders that they did not happen to like—in all of which we thought there was a restraint of interest to commerce.

All of them got together and entered into agreement, and we got a consent decree entered before Judge Learned Hand, which enjoined them continuously from the performance of these acts that we complained of—which we thought was a happy solution of that question; rather than a criminal prosecution of all of these men.

Mr. MONTAGUE. The consent decree?

Mr. HAYWARD. The consent decree; yes, sir. They came in and consented to it. I will say that that consent decree was nationally hailed by the builder's associations, and the labor people themselves, and the home builders of the country as a new bill of rights for laboring people and home builders who wanted to put up buildings. We were very proud of the work, and we felt that we had a right to be.

Now, we indicted the Central Foundry Co. and others, which is the soil pipe trust; and we indicted the Sanitary Potters' Association, which is the bathroom fixture association, for the manufacture of haker porcelain toilet ware for bathrooms—mostly in New Jersey, but widely extending in certain of its branches.

Now, I do not want to inflict the committee with too much of this.

Mr. HERSEY. What became of the cases that you had indicted, and when did you have them indicted?

Mr. HAYWARD. Who?

Mr. HERSEY. These last two th

mentioned.

Mr. HAYWARD. Well, there are the following cases where indictments have been brought, which have not yet gone to trial: Glass, soil pipe, and sanitary potters.

Mr. HERSEY. When did you indict them?

Mr. HAYWARD. Well, all within the year. They are being pressed for trial as rapidly as possible. And the glass case, I think, is the biggest case we have got. We hope to go to trial in January or February in that case; we have served notice; the trial notice was served in November 15; and the only reason the case has not been tried is that we can not get a judge to sit down for six or eight weeks to try one of those cases.

Mr. HERSEY. How many personal dependents were there in these cases?

Mr. HAYWARD. There were 63, I believe, in the total of 103, of whom 53 are individuals, the others were corporate. We tried in each case to get the individual whom we felt was primarily responsible for the conduct of the corporation.

Mr. CHANDLER. You talk about the "consent decree" being an economic as well as a legal question. How extensively was that binding upon anybody?

Mr. HAYWARD. Nation-wide; it covered every union bricklayer, mason, and plasterer in the United States.

Mr. CHANDLER. The consent decree was legally binding upon all the membership?

Mr. HAYWARD. There is no question about it.

Mr. CHANDLER. And as a matter of law?

Mr. HAYWARD. There is no question about that.

Mr. CHANDLER. Those immediately affected by it were the officers, were they not, only?

Mr. HAYWARD. It has been lately decided by the Supreme Court as binding on all the members.

Mr. CHANDLER. That is the decision of the United States Supreme Court?

Mr. HAYWARD. Yes, sir. There were 119,000 persons involved.

Mr. CHANDLER. You mean where it involved interstate commerce?

Mr. HAYWARD. Yes, sir; where it involved interstate commerce. But they would not lay marble or stone from Indiana if they did not like the condition under which it was quarried; then, they insisted also that they would not lay any dressed stone; they insisted on setting up a stone yard right there in the streets of New York to cut this stone that came from Bedford or some other place in Indiana, or marble from Vermont or Tennessee; and we contended that was restraint of interstate commerce, because this stone ought to be cut at the quarry, probably, and it necessitated the freighting in of an enormous bulk of stone to cut in a crowded place at very high wages in New York City. That was one of our complaints. That is enjoined now by this decree.

I should like to tell now about some of the causes we did not proceed against that were suggested by the Lockwood Committee. We went over them all very carefully.

Mr. MONTAGUE. How many of them were there, just roughly?

Mr. HAYWARD. There were 35 or 36 on the original list that was given to me, but no testimony was given for any of them. I would

like to make that clear. Many of these associations were obviously purely local in their character; for instance, the House Movers and Shorers' Association—we could not find any interstate feature in that association that we had any jurisdiction over.

The Fire Insurance Exchange: The Supreme Court has held, and fairly, that fire insurance is not an article of interstate commerce and does not constitute interstate commerce. And so we went through this list, and took the cases that, after an investigation, we thought we would make a case out of that had the interstate feature, without which we were helpless. If Mr. Untermeyer was here I would like to tell the committee something about the defendants and associations he had not prosecuted, being now an assistant attorney general of the State of New York, that are purely local.

Mr. CHANDLER. Would you mind telling the committee whether Mr. Untermeyer has any intention to appear here?

Mr. HAYWARD. I have no idea and have not had from the beginning that Mr. Untermeyer would appear.

Mr. CHANDLER. It is your opinion that he will not?

Mr. HAYWARD. It is my opinion that he will not, unless he is subpoenaed and brought here.

Mr. GOODYKOONTZ. Or retained? [Laughter.]

Mr. HAYWARD. Now, inasmuch as Mr. Untermeyer has been referred to here by members of the committee—one more case I might mention, the so-called Gypsum Trust: gypsum is a very important product, somewhat akin to cement, but used for plaster, fertilizer, plaster board, and also used widely in the building trade. That was a border-line case.

We took the bureau of investigation agents and we sent them all over the country, and we made a thorough investigation of that, and presented it to a grand jury and let the grand jury decide whether they wanted to indict or not. The grand jury voted not to indict, gentlemen; that they would have to dissolve their association. It was possible, of course, to resubmit this case to another grand jury. They met us in a very good spirit, I think; and only last night the lawyers from all over the country have been here in consultation with us, and we have got a consent decree prepared and practically agreed upon in this matter, which I think will prove very interesting and may help to solve many of the problems. The problem was to save the beneficial features of the trade associations and eliminate the criminal features under the Sherman Act or the features injurious to the public.

The credit feature, if properly used, is all right; the scientific investigations, where they all are working together, can keep a chemistry bureau, and also advertising; insurance rates—they can be mutually helpful to each other. But the trouble has been they soon get to exchanging prices, fixing prices, dividing up territory, and all that.

We have prepared a consent decree which I think will be entered in the next week, in which we have provided that this so-called trust, instead of having an association and holding monthly meetings at which they can wink prices back and forth at each other—shall form a corporation, not a money-making corporation, but a corporation the powers of which will be strictly limited by the articles of incorporation, and which will be get-at-able in case of violation of the Sherman Act.

Of course, it will not be a holding company or involve the problem of interlocking directorates, or anything like that at all. It will simply be a sort of public-benefit corporation.

We think that corporation may be able to do all of those beneficial things, and that in that way the association and the monthly meetings which has been the real evil of all these associations, will be done away with entirely. I am personally very hopeful that that may prove to be a piece of real constructive work that other trade associations—you know there are thousands of them in the country—may follow. I do not mean to say by that that we have abandoned criminal prosecutions at all. There are cases where these men did things that no decent man would do if there was not any Sherman Act, and they ought to be prosecuted criminally; there is no doubt about it in my mind. But we hope that this Gypsum decree will go a long ways toward defining what these companies can and can not do under the Sherman Act.

Mr. CHANDLER. Is this the last case you are going into, Mr. Hayward?

Mr. HAYWARD. No, sir; we expect to go ahead as rapidly as we can.

Mr. HERSEY. Take all the time you like.

Mr. HAYWARD. I do not want to bore the committee, I am sure.

Mr. CHANDLER. I thought if you were through I wanted to ask a question about the office work and your work over there. You say you have 41 officers on your staff?

Mr. HAYWARD. I have 41 lawyer assistants.

Mr. CHANDLER. Do you regard those as all that are necessary to cope with the difficulties of your office?

Mr. HAYWARD. Yes, sir; I think I have enough assistants to bring my limitations to two grand juries and to the judges that I can get.

Mr. CHANDLER. If there has been any delay, as charged in these specifications, in your office, it has been due to the fact that you could not get charges?

Mr. HAYWARD. Entirely due to that.

Mr. BIRD. And the grand juries?

Mr. HAYWARD. The delay in getting indictments, if there has been delay, has been due to our limitation on grand juries entirely. The delay——

Mr. MONTAGUE (interposing). The limitation on judges——

Mr. HAYWARD (interposing). The delay in getting indictments. In getting indictments we have been limited by grand juries; in coming to trial we have been limited by the courts.

My theory has been not to pile up a lot of indictments that there was never any chance of bringing them to trial. I could go ahead and indict a thousand people if I had enough grand juries. I would not do it even if I had the grand juries, unless I had courts to try them, Mr. Chairman; it would be ridiculous.

Mr. CHANDLER. Some of the delay might be supposed to be caused by the absolutely necessary investigations that you referred to being made in every State through your people that you sent out?

Mr. HAYWARD. That is true; but we feel that we have gotten over that condition, because of the Attorney General giving us all of these assistants. As I said, we had 32 working for us at one time in different trust cases.

Mr. CHANDLER. Is there any reason why these cases mentioned in the specifications here as related to your office should have been tried before other cases on your criminal calendar?

Mr. HAYWARD. No, sir; none that I know of.

Mr. CHANDLER. There is nothing pressing about their cases?

Mr. HAYWARD. No, sir.

Mr. CHANDLER. And they had to wait the judge to try them?

Mr. HAYWARD. That is all. I could cover another charge right there.

Mr. SUMNERS. I want to ask one or two questions right on that point. Are you in the southern district of New York?

Mr. HAYWARD. Southern district; yes, sir.

Mr. SUMNERS. How many judges have you there?

Mr. HAYWARD. We normally have four, Mr. Sumners; we have always had four judges. One of these judges, Judge Julius Mayer, one of the district judges, was promoted to the United States Circuit Court of Appeals, and that vacancy had not been filled yet, so it leaves us with three judges.

Under the new bill, which passed Congress and was signed by the President, it provided for two more judges. That really means three—the two new ones and the successor to Judge Mayer. That will give us six judges when they are appointed.

Mr. SUMNERS. That vacancy created by the promotion of Judge Mayer—how long has that been continued?

Mr. HAYWARD. I can not tell you; it has been a good many months.

Mr. SUMNERS. A little over a year, is it not?

Mr. HAYWARD. I do not remember when Judge Mayer—you see, in our district—it may not be true in other parts of the country—the circuit judges up there now, I guess, they come down and sit as district judges. I think Judge Mayer has practically continued most of his work as district judge since he has been circuit judge. We have that advantage. I can not tell you the exact time; it was since I have been district attorney, but I can not give you the date.

Mr. SUMNERS. A year ago last fall, in October or November.

Mr. HAYWARD. I was not district attorney a year ago last fall, was I? Yes; it may be more than a year ago.

Mr. HOWLAND. Mr. Hayward, all of these matters turned over by the Lockwood committee have been investigated by your office?

Mr. HAYWARD. All have been investigated in a general and thorough way, but not with the thoroughness that they would be investigated if we could send the agents out of the State into the factories to investigate.

I do not pretend to say that we have finished our investigation of all these cases. We have made a thorough investigation of everything the Lockwood Committee has had.

Mr. HOWLAND. That is the idea; that is the point I wanted to bring out.

Mr. HAYWARD. But we had to make our own cases—they gave us nothing but clues; that is all they gave us, clues.

Mr. HOWLAND. You have given your careful attention to this list of alleged cases that were turned over to you by the Lockwood Committee?

Mr. HAYWARD. We certainly.



Mr. HOWLAND. Did you at any time receive a letter, you or your assistants, in regard to your activities in the matter of investigating and prosecuting the cases turned over to you by the Lockwood Committee, from Mr. Untermeyer?

Mr. HAYWARD. Oh, I received many; and my assistant, Mr. Podell, has received many. And they have all been answered.

Mr. HOWLAND. I will ask you if you have one in particular which compliments you very highly for your activities in this matter and says that he has no complaint to make, except in regard to the cement cases?

Mr. HAYWARD. That is correct.

Mr. HOWLAND. Perhaps we might have that letter read and put into the record, if you will identify it, if you have it there.

Mr. HAYWARD. The letter was addressed to Mr. David L. Podell, my principal assistant in these Sherman Act cases. It is dated March 20, 1922.

Mr. GOODYKOONTZ. Who is it from?

Mr. HAYWARD. It is signed by Mr. Samuel Untermeyer.

Mr. GOODYKOONTZ. I object.

Mr. HERSEY. Let us have it. He has been in the newspapers. Why not get him into court once in awhile?

Mr. HAYWARD. The letter itself refutes many public statements Mr. Untermeyer has made at long range.

Mr. JEFFERIS. Just a moment. I do not want to pay much attention to him.

Mr. FOSTER. I do not see anything wrong about putting in the record a statement from him.

The CHAIRMAN. I do not know that it is of importance one way or the other.

Mr. MONTAGUE. Just put it in the record, and we can read it afterwards.

The CHAIRMAN. Yes.

Mr. HERSEY. I think we had better read it now.

Mr. JEFFERIS. If I understand Mr. Untermeyer, he is a man who likes considerable notoriety, and I do not believe he needs any further advertising; he has had advertising enough.

The CHAIRMAN. While not admissible as evidence, it is a fact that Mr. Untermeyer has made a lot of statements.

Mr. HAYWARD. May I ask that I may read one paragraph, inasmuch as it has to do with the testimony that I want to give, and have given, in connection with the cement cases, Mr. Chairman?

Mr. MICHENER. Let him read it all.

Mr. HAYWARD. It is an awfully long letter. This paragraph which I want to read is as follows—the date of the letter was last March, 1922.

Mr. CHANDLER. Who was this addressed to?

Mr. HAYWARD. It was addressed to Mr. Podell, my assistant. He says [reading]:

I have not at any time criticized the work here since you took charge under Colonel Hayward. I have seriously criticized and ought to have much more criticized the attitude of the Department of Justice in the Cement Trust case, and that has been the only part of criticism. I shall continue to criticize that work so long as it remains in the same incompetent hands, with nothing accomplished.

That was with special reference to the cement case; and within a month, certainly—I guess a week—at the time he wrote this letter he knew that the criminal cement case was set for trial in the district court; and within less than a month it was tried, and it started, and the case took eight weeks for criminal prosecution. At the time he wrote this letter I know that he knew the case was immediately coming on for trial.

Mr. CHANDLER. What is the date of the letter?

Mr. HAYWARD. It is dated March 20, 1922.

Mr. JEFFERIS. He probably thought he could not get credit for everything.

Mr. HAYWARD. Undoubtedly.

Mr. HOWLAND. I ask you——

Mr. BIRD (interrupting). Colonel Hayward, I would like to ask you a question, if you please, in order to clear up the matter you have touched on. You said that you got indictments as rapidly as—I think it was three grand juries.

Mr. HAYWARD. Two grand juries.

Mr. BIRD. Two grand juries could work, and that you got the trial of the cases as rapidly as you could with the number of trial judges that you had. Now, was there any favoritism shown in those cases that were not proceeded against?

Mr. HAYWARD. None whatever.

Mr. BIRD. How did you determine that?

Mr. HAYWARD. The cases in the office fall in two natural classes—jail cases and short cases—the usual run of cases. Then there is another class of cases, such as call fraud cases and Sherman anti-trust cases, conspiracy cases, etc., that require from four to eight weeks to try.

It is our necessary policy to try those long cases only when we can get a judge there to try them. The charge is made here that there was delay in the trial of the Hart-Ready case, or something like that. There were a number of defendants.

Mr. BIRD. One of the charges is that there was discrimination?

Mr. HAYWARD. That is right. I can best answer that in connection with this particular case by saying that we had just got through trying the Durell-Gregory case, a long mail-order case, before Judge Vest, of New Orleans, who came up to help us out in that case, and although that Durell-Gregory was a year and a half older than the case of which complaint is made, and the case of which complaint is made is not yet a year old and in our office it is a reasonably young case; and as far as I know or have intended there has been absolutely no discrimination, unless the discrimination has been to expedite some important case to get it to trial. I think I may have done that when I thought witnesses would appear or something like that.

Mr. BIRD. I will ask you another question: In determining who should be proceeded against, was personality a factor at all?

Mr. HAYWARD. Never in the slightest degree; not the slightest degree.

Mr. JEFFERIS. The Attorney General here in Washington did not undertake to control that in any

Mr. HAYWARD. He did not know about it; he never told us anything about it, and never

about it; he never told us in any way.

Mr. SUMNERS. Mr. Hayward, it has never been true in any of these matters that holding up the appointment of this district judge for a year that has been so badly needed and holding up these other appointments of the other two judges since last September had any relationship to the general situation?

Mr. HAYWARD. Oh, I think not; I never heard any such—I know something of the situation in connection with the recommendation for the appointment of those judges that I do not think I will state here.

Mr. SUMNER. No.

Mr. HAYWARD. But it is a perfectly obvious reason to me. I think it has nothing whatever to do with these matters. I could feel sure in giving my personal assurance on that point. We regret they have not been appointed and hope they will soon be appointed.

Mr. HOWLAND. I will ask you to turn your attention to specification No. 11, subdivision No. 1, which has to do with an allegation——

The CHAIRMAN (interposing). What page is that, Mr. Howland?

IN RE SPECIFICATION 11, SUBDIVISION 1.

Mr. HOWLAND. Well, I can give you one page. It is page 63. I have to go by specification No. 11, subdivision No. 1, in re British schooner *J. B. Young* and its release.

Mr. FOSTER. Page 63.

Mr. HOWLAND. You are familiar with the specification that the schooner *J. B. Young* was seized by Federal authorities and was released under orders of Harry M. Daugherty, Attorney General of the United States, when one Thomas B. Felder was retained in the case, charging that the said Thomas B. Felder had some personal interest or influence with the Attorney General. State what you had to do with it, and what do you know about it.

Mr. HAYWARD. Well, Mr. Felder was counsel in some of these cases. I can tell the committee just what happened in connection with this case, and some of the others. I see the other schooners are not mentioned here.

Mr. HOWLAND. No; this is the *J. B. Young*.

Mr. HAYWARD. That is part of our work in trying to suppress rum running from the Bahama Islands. The Department of Justice or my office has nothing whatever to do, naturally, with the seizure of these schooners. And some time—a year ago last summer—the customs authorities seized a schooner laden with rum, known as the *Henry L. Marshall*. She was seized about 6 miles off of our shores and brought into New York Harbor, and, as is usually the case, these facts were reported to my office by the customs guards. Obviously, she was outside of the 3-mile limit. It was just as plain, however, that she was breaking her laws and had made contact with the shores of the United States and was running contraband ashore in small boats.

The problem was to hold her in spite of her seizure outside of the 3-mile limit.

I received from Colonel Goff what I considered not a reprimand, but a dispute as to the authority to hold that ship seized outside of

the 3-mile limit. I found in investigating the law that there was a very ancient, but nevertheless apparently good statute, called the "hovering act" on our statute books. I never had heard of it until I went to look it up. It was copied from the English hovering act, and it gave authority, it seemed to me, clearly to our Government to seize any vessel within 4 leagues of our shore—which would be 12 miles—provided the vessel was in contact with the shore and was engaged in unloading contraband contrary to our laws.

So I took issue with the Department of Justice on it, and said I felt sure we were right, and I wanted to hold the *Henry L. Marshall*, and did hold the *Henry L. Marshall*, and it went to the Supreme Court of the United States, and while that point was abandoned before we got there and was not seriously urged—I did not argue it before the Supreme Court—the Supreme Court upheld us in the *Henry L. Marshall* case.

Well, as these schooners came along, the British consul general became very much interested in that first case and the subsequent cases. Mr. Thomas B. Felder, of New York, was employed in, I think, practically all of these ship rum runners cases. He never came near us or never went to the Attorney General on those cases. I thought we had the best of it on the law, and I think so now. He did, however, go to the British Embassy in Washington, and he got the British Embassy, I imagine, all stirred up about this thing, and they went to the Secretary of State of the United States, and the Secretary of State of the United States protested to the Department of Justice about the seizing of these vessels outside of the 3-mile limit, and because they said that the municipal law of the United States could not possibly apply outside of the 3-mile limit, unless the small boats that were coming ashore from these hovering ships were the boats that belonged to the vessels themselves—the lifeboats or something like that—were used.

My contention was it did not make any difference if a launch put out from shore and took contraband from a vessel that was hovering and brought it ashore, that that broke our customs acts and our Volstead Act and everything else: that they were in contact with the shore and that it did give us jurisdiction. And I want to say that the Attorney General and Mrs. Willebrandt, Assistant Attorney General, who has that matter in charge, and myself died hard on that proposition, and it was only when the Secretary of State made an insistent demand that we yield on this proposition that we did yield. And this statement about the *J. B. Young*, not only is what I have said true as to the general situation, but in this particular case when we seized the boat the evidence was somewhat doubtful, and I wrote the department a letter—I do not know whether we have it or not—but I can tell the committee what I said in it—it can be offered here—that I thought it inadvisable to make a test case on this *J. B. Young* schooner, because undoubtedly we would get other cases almost immediately that would be better cases on which to make the stand, and that I doubted whether it was wise to make an issue over this *J. B. Young* case, because at that time we did not have so very much satisfactory evidence—enough to make a *prima facie* case, to be sure—but I did not want to stand where the British Embassy was on the other side. N here is to the *J. B. Young* case.

Mr. HERSEY. You won out in a case under like circumstances?

Mr. HAYWARD. Yes, sir; and that law, in my opinion—I don't set myself up to dispute the State Department, but my belief is that the hovering act of the United States was meant to apply to just such a case, to ships within the 12-mile limit, whether they sent their own little boats ashore, or wigwagged to shore and have little boats come out to unlawfully unlade contraband and smuggle the stuff past our customs into the United States.

That is my story and I am going to stick to it.

Mr. CHANDLER. When you say that the hovering act covered a ship 12 miles out having contact with the land, you mean connection with these little boats?

Mr. HAYWARD. I claim it means if they have any such contact with the shore as enables them to unlawfully unlade contraband goods from the hovering vessel and get it on our shores. The State Department claims that it only means when the boat that brings the stuff ashore is a part of the ship itself.

Mr. CHANDLER. That is a subject of doubt, as to what contact means, then.

Mr. HAYWARD. That is reenacted in your new tariff act, I will say. But it is perfectly obvious that neither Mr. Daugherty nor any of the district attorneys could possibly taken any other action than they have taken, in view of the urgent request of the State Department. That would seem to be clear to everybody.

Mr. HOWLAND. That is the point.

Mr. HAYWARD. That is the point about this case.

Mr. HOWLAND. Colonel Hayward, there is subdivision 3 of the specification No. 11 which charges that Hart, Ready——

IN RE SPECIFICATION 11, SUBDIVISION 2.

Mr. HAYWARD. Do you want to take up 2 first? I can cover 2.

Mr. HOWLAND. All right. That is the release of \$200,000 worth of wine?

Mr. HAYWARD. Yes.

Mr. HOWLAND. What page is that on?

Mr. HAYWARD. Sixty-four of serial 41. I know of my personal knowledge that the files of the Department of Justice and of the various district attorney's offices throughout the East were ransacked with a fine-toothed comb when this charge was first read, to find out anything about this case. I myself reported that there never had been such a case in my jurisdiction. The charge is that Mr. Felder was retained and secured the release of this wine. After I had reported that to the Department of Justice, and other district attorneys had, and I see that at the time this answer was drawn nothing was known about the facts of that, they could not find it anywhere. After this answer was drawn, and before I came down the last time, I found in a very old file in my own office a case which I think must be the one referred to here. The name is not quite the same. We never have been able to locate the mysterious Nathan Musher on any files of any paper in the Department of Justice. There is a Continental Distributing Co., however, that had some wine that had been issued for sacramental purposes, and I



brought the file down—I have it here somewhere. I can briefly state this, that it was a case that came up before I was ever district attorney. It started long before Mr. Daugherty was Attorney General, and shows that it was settled, not by the Attorney General but by Mr. Kramer, the then prohibition director, giving specific directions to Colonel Caffey, my predecessor in office in New York, to dismiss that case and release this sacramental wine.

I have searched everywhere for this case. I think Mr. Felder never was even remotely connected with it, certainly he never had anything to do with the present Department of Justice or with my office in connection with that case, and I have no doubt—I am not criticising Mr. Kramer or my predecessor, Colonel Caffey, in the case, nor trying to pass any blame to them. I think there was no blame in the case attachable to anyone.

Mr. BIRD. When was this wine released, with reference to the time of Mr. Daugherty's induction into office?

Mr. HAYWARD. It was, as I recall it, the spring that he was inducted into office, because Mr. Kramer went out shortly after Mr. Daugherty came in, as I remember it, and the correspondence is between Mr. Kramer and Colonel Caffey, my predecessor. I can not give you that date.

#### IN RE SPECIFICATION 11, SUBDIVISION 3.

Mr. HOWLAND. Now, with reference to subdivision No. 3 of the same specification, the Hart-Ready-Lynch matter.

Mr. HAYWARD. I think, Mr. Howland, I have covered that. That is a very long case. It is a conspiracy charge and there are a great many defendants, and the case has come along in its usual order in the office. It is no more important than a dozen other cases I have got, and we expect to reach it in January for trial. I made a statement before these charges were filed, Mr. Howland, in the New York Times, and have made it everywhere, and every assistant in my office knew that this case was noted for trial in December if we could get to it.

Mr. HOWLAND. What truth is there, then, in this statement that since the time of their indictment nothing has been heard of the case, and the criminal prosecution has come to a stop?

Mr. HAYWARD. That is absolutely false. There is not a word of truth in it.

Mr. HOWLAND. I think that is all. Are there any questions by the committee?

Mr. SUMNERS. Colonel Hayward, I do not know whether you want to make any statement in regard to a statement I find here on page 41, the Marble Industry Employers' Association and the Contractors' Protective Association. I presume those concerns were engaged in intrastate commerce?

Mr. HAYWARD. I assume that must be the case. The Marble Industry Employers' Association had been prosecuted by the State authorities and had been convicted. I think they were only fined. I don't believe any of them went to jail, but we did not duplicate the work of the State authorities in that particular case.

What was the other one?

Mr. SUMNERS. With operating them, there seemed to be some employers' as association of employers. You made

some reference to your activity regarding the association of employees, and I thought perhaps you would not like to leave the stand without making some comment as to these others, which seem to be an association of employers.

Mr. HAYWARD. It may be that this statement will not cover every one of those cases, but I am pretty sure that I would be safe in saying, Mr. Sumners, that in every one of these cases enumerated here on page 41 there was an investigation made to the extent that we could make it and to the extent that we became satisfied that there was no interstate feature that would give us jurisdiction to prosecute in these cases. I don't think we made a slip up anywhere on them. We went through them very carefully. Certainly there was no idea of not prosecuting because they were employers rather than the other. If we did anything we favored the employees in all of these prosecutions; in fact, in some of these cases there was a possibility that we might have indicted, but for the possibilities of the Clayton Act, some of the employees who had made agreements with these manufacturers to limit their output during the day, which we thought was a corrupt agreement. We have some of them indicted in the glass indictment, labor leaders.

The CHAIRMAN. If that is all, we will call another witness.

Mr. HOWLAND. We will call Mr. Riter.

This is with reference, Mr. Chairman, to specification No. 12, subdivision No. 1, on page 66 of this serial 41, with reference to the Standard Oil Co.

**TESTIMONY OF MR. WILLIAM D. RITER, ASSISTANT  
ATTORNEY GENERAL, SALT LAKE CITY, UTAH.**

(The witness was duly sworn by the chairman.)

Mr. HOWLAND. Mr. Riter, will you give us your full name, your residence, and your business?

Mr. RITER. William D. Riter. My temporary residence is Washington, D. C.; permanent residence, Salt Lake City, Utah. I am an Assistant Attorney General.

Mr. HOWLAND. How long have you been with the Department of Justice?

Mr. RITER. I think I took my oath of office on April 14, 1921.

Mr. HOWLAND. Has your attention been called to this specification with reference to certain oil lands or lands in the Elk Hills district in California, known as sections 16 and 36? Has your attention been called to that charge here and specification?

Mr. RITER. Yes, sir; I have read the specification.

Mr. HOWLAND. Now, then, it is charged there that the Department of Justice has interfered with and blocked and refused to prosecute and protect the interests of the United States against the Standard Oil Co. with reference to this section No. 16. Give the committee the facts in regard to that situation.

Mr. RITER. In order to understand this specification, it is necessary to bear in mind the legal question that is involved. I think it was in 1853 that Congress passed an act granting the State of California sections 16 and 36. Several years ago the Supreme Court of the United States decided in a case, I think reported in 102 U. S., that lands known to be mineral at the date the grant became effective

did not pass to a State. Of course, the grant does not become effective—

The CHAIRMAN. That was a decision in reference to California lands. My recollection is there was a different rule applicable to different States.

Mr. RITER. That was with respect to the State of California and, I think, the Supreme Court has recently decided that the same rule is applicable to practically all the States. The title, however, obviously does not pass until the lands have become surveyed. Sections 16 and 36 of this particular township in California were surveyed in December, 1901, the plat of survey was approved by the surveyor general in July or August, 1902, and the plat was approved by the General Land Office at Washington in January, 1903. On last-named date, the grant then became effective and, accordingly, the question that was involved was whether the lands, on the date that the grant became effective, were known mineral lands. If they were not known mineral lands obviously title passed to the State.

Mr. JEFFERIS. In 1853?

Mr. RITER. Under the act of 1853, but the grant would not become effective until the survey I have just mentioned. It appears that along about 1912 or 1913, the Government was very active in looking into the title of the various oil lands in California, and that special agents of the Department of the Interior had investigated these two particular sections and had made a report to the General Land Office, setting forth facts that indicated that at the time this grant became effective these lands were known mineral lands.

Accordingly, the Commissioner of the General Land Office, in 1914, wrote a letter to the registrar and receiver of the local land office at Visalia, Calif., directing him to prefer charges against these two particular sections, and to notify the interested parties, so that they could be given an opportunity of presenting evidence, and to charge that these lands were mineral in character, namely, petroleum lands, and known to be such at the date the grant became effective.

Apparently no action was ever taken by the local land office with respect to that request. I think it was in February of 1921 that a special assistant to the Attorney General by the name of Henry F. May, who had charge of what is known as the withdrawn oil-land litigation for a number of years, wrote a letter to the Attorney General in which he said it had been discovered in going through certain files that the report I have just indicated that these special agents had gotten out in 1912 and 1913, had not been sent to the local land office in 1914 with the request that those charges be preferred, but that, in some way, the papers had become placed with a file that was designated "closed files," and that accounted for the fact that no section had ever been taken. He also said that, in so far as section 16 was concerned, no drilling had taken place on that section, but that the Standard Oil Co. had drilled 19 wells on section 36, and that the production was very high. I think he added that it had also been supposed by his office and by the Interior Department that the State of California had acquired a good title, and that the Standard Oil Co. claimed that land, not under the United States, but under the State of California; that he called the Attorney General's attention to these facts, for whatever action the Attorney General thought proper. His letter is dated February 11

Mr. HERSEY. That is before Mr. Daugherty's time?

Mr. RITER. Yes. On receipt of that letter by the Department of Justice, a copy was sent by the then Attorney General, or, more accurately speaking, I think, by the Assistant Attorney General——

Mr. HERSEY. What date?

Mr. RITER (continuing). To the Secretary of the Interior and to the Secretary of the Navy. The letter to the Secretary of the Navy bears date of February 25, 1921, and the letter to the Secretary of the Interior, I think, was dated the same day; or, at any rate, if a letter was not sent by the Attorney General, the Department of the Interior was advised from California of the existence of the facts I have just mentioned.

Accordingly, on February 28, 1921, Secretary Daniels addressed a letter to the then Attorney General. It is a short one, which I can read into the record if it is desired, but, in substance it sets forth that a condition has developed with respect to these sections that is an exceedingly interesting one, and it would appear that some action on the part of the Government should be taken to protect its interests.

The reason that the Navy Department was interested in these lands is because, I think it was, in 1912, they were included in the naval petroleum reserve, in order to conserve fuel for the use of the Navy. And on March 3, 1921, the Secretary of the Interior wrote a letter to the then Attorney General, in which he requested that appropriate action through the courts looking to the protection of the Government's interest, pending final action on proceedings through local land office at Visalia, Calif., charging section 36 of the designated township and range to be mineral in character. According to the file of the Department of Justice, it appears that Mr. Garnett, who was a special assistant to the Attorney General, wrote a memorandum to him on March 30, 1921——

The CHAIRMAN. To whom?

Mr. RITER. How is that?

The CHAIRMAN. He wrote a letter to whom?

Mr. RITER. To the Attorney General. I might state, in that connection, that Mr. Garnett was my predecessor in charge of the public lands division. I think that his name had been sent to the Senate some time in the fall of 1920, but it was at a time when the Senate was not making any confirmations, and accordingly he automatically went out of office at the end of that Congress, but he was appointed a special assistant to the Attorney General to argue certain cases in the Supreme Court, which were then soon to come up for argument, and in this memorandum to the Attorney General——

Mr. JEFFERIS. That is Attorney General Daugherty?

Mr. RITER. Yes; under date of March 30, 1921, he calls attention to the fact that there are two letters from the Secretary of the Interior (I think he means there is one from the Secretary of the Navy and one from the Secretary of the Interior) recommending appropriate action through the courts for the protection of the Government's interests pending final action on proceedings through the land office at Visalia, Calif., relative to these two sections. He then goes on to state about the value of the lands. He says:

Recommendation for this suit was received on March 3, 1921, while I was Assistant Attorney General; but, owing to the impending change of administration, it was not sent to Henry F. May, special assistant.

And so forth. And then he speaks about his appointment to argue certain cases in the Supreme Court and says he understands his authority is limited merely to arguing those cases, and for that reason he submitted this request for the institution of suit to the then Solicitor General, Mr. Frierson, of Tennessee, and also to Mr. Fowler, a special assistant to the Attorney General; that he also called the matter to the attention of Mr. Daugherty's private secretary, Mr. Gibbs. Then he goes on and says that—

Having received no suggestion as to the disposition of the matter, I am formally presenting it for your consideration. My information from the Interior Department is that oil of the value of thousands of dollars is being taken daily from section 36 and that an injunction should be sought to preserve the status quo pending determination of the charges of the Land Department that those lands were of known mineral character on the date of the survey. Of course, an accounting should also be asked for.

The next paper in the file is a letter signed by the Attorney General and addressed to Mr. Garnett, which I wish to read into the record.

Mr. HERSEY. What is the date?

Mr. RITER. It is undated, but obviously it would be subsequent to March 30, 1921, that being the date Mr. Harnett sent his memorandum.

Mr. HERSEY. Is this from Attorney General Palmer?

Mr. RITER. Daugherty. [Reading:]

Mr. GARNETT. Regarding the suits proposed in California, please advise no suits in this matter be brought until I have a chance to go into the matter with you.

Respectfully,

H. M. DAUGHERTY,  
*Attorney General.*

As I have already stated, I took my oath of office, I think, on April 14, 1921, and I can not recall accurately how long it was after that, but probably about two weeks, that my secretary came in and handed me a card that bore the name of Mr. Loomis, an official of the Standard Oil Co. So he came into my office and introduced himself and told me what his position was. I do not know whether he said he was vice president or some other official; but, at any rate, he went on to tell me about this suit which he said he understood the Government was to bring. That was the first time that the matter had ever been called to my attention. He said that the Standard Oil Co. claimed that it had a good title derived from the State of California; that these sections were school sections, the title to which had passed to the State of California under the act of 1853, and that he understood that the title to his company was probably going to be assailed.

He said that if the Government intended to ask the courts for the appointment of a receiver his company would undoubtedly want to be heard in court, so as to present testimony in opposition, and that he thought that, under the circumstances, it was proper that we should delay doing anything until the Interior Department had determined the question of fact which was involved, namely, whether these were known mineral lands at the time the grant became effective.

I do not know whether I sent for the file that day, or whether I told him that it would be necessary for me to familiarize myself with the file; but, at any rate, I think he called two or three days later, so as to give me an opportunity of looking into the question. And I had at that time, in addition to the Department of Justice file, the reports that the Land Office had sent to us, containing the result



of the investigations conducted by the special agents with respect to the character of the lands. And, in the meantime, I went through these very carefully, and at that time was very familiar with all of the facts which they disclosed.

Of course, the facts, many of them, have passed out of my mind since then; but this morning, when I obtained another copy, I found that the Standard Oil Co. acquired title to section 36, or, at least, a large portion of it, about 1910. The State of California had issued a patent to a certain individual, I think in 1910 or 1908, I am not clear which, and the Standard Oil Co. had acquired title to the land under California's patentee.

When Mr. Loomis returned to my office after this first conference, I told him that, if there was to be an early hearing by the Land Department to determine the character of these lands, that I was disposed to delay action until that question of fact could be determined, because I realized that, if the Land Department should find that these lands were not known mineral lands at the time that the grant became effective, why, obviously, the Government had no standing in court.

And he said that he thought there would be an early hearing by the Interior Department. I said:

It is very apparent from the conversation I have had with you that, if the Government applies for a receiver, your company will resist; that it will take the Government some few days in order to prepare a bill of complaint; that probably the court will be reluctant to appoint a receiver on the ex parte application of the Government, and will give you an opportunity of presenting your side of the case, before any action is taken; and it occurs to me that it will probably take two or three months before the matter could be presented to the courts; and that if a hearing can take place by the Land Department within that time, why, I am disposed to delay taking any action until that question of fact can be determined.

It was either through him, or through inquiries which I made myself of the Interior Department, I forget which, that I ascertained that the Land Department was going to have a hearing some time in June of 1921. And this conversation that I had with Mr. Loomis, I imagine, was along about the 1st day of May.

He said that he was very anxious that Mr. Sutro, the attorney for the Standard Oil Co. in California, should present the Standard Oil Co.'s side of the case to me before I took any final action.

"Well," I said, "we have a special assistant in San Francisco by the name of Raymond Benjamin." And I said, "I see no need for Mr. Sutro coming all the way across the continent to take this up with me. I suggest that he call upon Mr. Benjamin and present this matter to him, and then Mr. Benjamin can, in turn, present it to me."

He said, however, that inasmuch as it would be necessary for me ultimately to pass upon the question, he preferred very much to have Mr. Sutro make an oral statement to me as to the Standard Oil Co.'s position.

"Well," I said, "if Mr. Sutro will come on soon, and if you can give me some assurance that the land department will determine this question of fact at an early date, why, I shall be disposed to delay taking any action until then." "But," I said, "I want some assurance that the oil operations will not be carried on in such a way as to destroy the land."

He said that he would do all he could in order to satisfy me with respect to that; and he later produced a telegram which he had received from Mr. Sutro, advising of all the oil operations that were

being carried on, and an assurance on the part of the Standard Oil Co., as I recall, that no further wells would be driven.

My recollection is that Sutro was planning to come to Washington to present this matter before the Secretary of the Interior in June of 1921. But at any rate he was able to come much sooner. Loomis had told me that Sutro had professional engagements which made it impossible for him to come to Washington until some time in June; and I was therefore rather surprised when I was advised that Sutro was planning to come to Washington much earlier.

And when I was told that he would be in Washington some time in May, I at once sent a telegram to a lawyer residing at Raleigh, N. C., by the name of J. Crawford Biggs, asking him to come to Washington to confer with me.

The reason that I wanted Biggs present was this: The Government some years ago had instituted a suit against the Southern Pacific Co. to cancel patents which that company had obtained to lands in this immediate vicinity, in the Elk Hills, in California, the ground of the suit being that the Southern Pacific had obtained these patents through fraud; and Mr. Biggs had been appointed a special assistant to the Attorney General, if not to try those cases in the lower court, at least to argue the cases in the Supreme Court; because the case is reported in 251 U. S., and it was argued by Biggs. And knowing that he was familiar with this entire situation, I was exceedingly anxious to get his advice as to the best course to pursue.

So he came to Washington in May, pursuant to my telegram, and got here at the same time with Mr. Sutro.

So when they were in my office, I told them that I wanted them to go into one of the other rooms, and to go into the matter very extensively, and that I wanted Mr. Biggs to hear what Mr. Sutro had to say, and that after that conference was over I would confer with Mr. Biggs.

And accordingly Mr. Biggs came back and he said:

Why, Mr. Riter, the only thing that the Department of Justice could request the court to do in this case is to have a receiver appointed, so as to take charge of the property pending the determination of the land department on this question of fact. The courts have no right to go into the question of whether this is nonmineral land; that is exclusively a question for the Interior Department to determine. And accordingly, if we bring suit, the only object will be to put the property in the hands of a receiver until that question can be determined.

I said to him, "Well, I am wondering if we should ask for an injunction, what effect it would have." And my recollection is that he stated that he thought that if we did obtain an injunction, which was doubtful, it would be disastrous, both to the Standard Oil Co. and to the Government itself, assuming that the Government would ultimately prevail, for this reason: That if we enjoined the withdrawal of the oil from this section, it would simply mean that the persons who had driven oil wells on the adjoining sections, the title to which was not in suit, would drain the entire oil reservoir, and the result would be that both sides would lose.

So we both concluded that it was wholly impracticable to ask for an injunction.

"Well," I said, "do you think it is necessary to ask for a receiver?" He said, "Well, I do not think so;" and I said, "Well, I do not either." I said, "My own idea is that receiverships have been the

disgrace of the legal profession; and I am satisfied that if a receiver is appointed in this case, application will be made to the court, when the receivership is terminated, for some fancy fee for the receiver, or his counsel; and if a receivership can be avoided, I think it ought to be done." And he said, "I quite agree with you on that."

And I said, "Now, inasmuch as Commander Stewart, of the Navy Department, is looking after all the oil land in which the Navy Department is interested, I suggest that we ask for his views, and get him over here."

And so we sent for Commander Stewart; and we had a conference together; Mr. Biggs, Commander Stewart, and myself. And we put the situation up to Commander Stewart, and he, too, was of the opinion that it would be disastrous to ask for an injunction, even assuming that the court would issue one, and also said that, in his judgment, no receiver was necessary, in view of the fact that assurances had been given by the Interior Department that there would be an early hearing to determine the character of the lands. So I said, "Now"——

Mr. HOWLAND (interposing). Well, can we not come right to the point now, Mr. Riter? When did the Secretary of the Interior have a hearing on this matter, and what was his decision?

Mr. RITER. Just let me precede that by one statement, and I will reach that point.

Mr. HOWLAND. All right.

Mr. RITER. We got a letter from the Secretary of the Navy, Mr. Denby, to the effect that, in his judgment, no receivership was necessary.

And it was only a few days after that that the Secretary of the Interior had a hearing to determine the character of the lands. I think the date was June 9, 1921. He had written to the Attorney General that he would be glad to have some lawyer from the Department of Justice present, if the Attorney General wished so; and accordingly I sent a Mr. Hammil, a lawyer who had been connected with this withdrawn oil land litigation in California, to attend this hearing before the Secretary of the Interior. And I think he had two other men in my division who went over there at that time, making three in all. And they came back to me and told me that there had been this hearing, and that the Secretary of the Interior had decided that these lands were not known mineral lands at the date that the grant to California became effective; and accordingly, that automatically put the case out of our hands; there was nothing further for us to do.

The CHAIRMAN. Under the law, the Secretary of the Interior must decide in the first instance whether the lands are mineral or not?

Mr. RITER. That is exclusively his province.

The CHAIRMAN. And no suit can be brought for the purpose of setting aside his holding, except for fraud, or something of that kind?

Mr. RITER. Except for fraud.

Mr. BIRD. Under the statute, is the determination of the Secretary of the Interior conclusive?

Mr. RITER. Yes, sir; the Supreme Court has so decided.

The CHAIRMAN. Had there ever been any holding by the Secretary of the Interior's office that any of this land was mineral land?

Mr. RITER. There never had been a hearing.

The CHAIRMAN. That was the first time?

Mr. RITER. There had never been a hearing until this time to determine the known mineral character of the lands.

Mr. GOODYKOONTZ. Could the decision of the Interior Department have upheld the theory that it was mineral land which existed at the date of the grant, no drilling having taken place? It would have been a pretty difficult fact to prove, from the existence of the oil that was developed on adjacent or contiguous territory?

Mr. RITER. That question was put at rest by the decision of the Supreme Court of the United States in the case of *Southern Pacific Co. v. United States*, 251 U. S. In that case, there had been no actual drilling operations on the land in controversy, but the Government contended that the geological evidence and the drillings on adjoining ground pointed unmistakably to the fact that this was oil land; and the Supreme Court in that case held that the Government was entitled to relief; that we had made out the charge that these lands were obtained fraudulently by the Southern Pacific Co., representing them to be nonmineral, when, as a matter of fact, they knew that they were mineral.

Mr. GOODYKOONTZ. Well, this case that you speak of here—the one in controversy—did that present the situation of development on the contiguous property, or of a geological formation which would indicate the presence of oil?

Mr. RITER. Well, the report of the special agents contained data from which you could draw the inference that these lands, from the geological evidences existing at the time, and from drilling operations in that neighborhood, were known mineral lands.

The CHAIRMAN. At the time of the survey?

Mr. RITER. At the time of the survey, yes; there was evidence one way, and the Standard Oil Co. maintained that there was evidence the other way.

The CHAIRMAN. How near to this land have those drillings taken place?

Mr. RITER. I do not recall accurately. My recollection is that, in the case I have referred to, the nearest drilling operations were 3 or 4 miles away.

The CHAIRMAN. Three or four miles away from this land?

Mr. RITER. No, from the lands involved in the suit against the Southern Pacific Co.

The CHAIRMAN. What I was asking about was the situation in connection with this land?

Mr. RITER. Well, I do not recall accurately. There were mineral locations made on—I do not know whether they were on these particular sections, but I think mineral locations had been made; but no oil had ever been produced until January of 1919.

Mr. FOSTER. Ten years after the period when it first arose?

Mr. RITER. More than that. I think, as I say, the Standard Oil Co. acquired title about 1910.

Mr. HOWLAND. That is all.

The CHAIRMAN. Anyhow, the authority and power would be in the Secretary of the Interior to hold that it was nonmineral land?

Mr. RITER. Yes.

Mr. JEFFERIS. Mr. Riter, if you had gone ahead and tried to get an injunction, it would have ended by being futile?

Mr. RITER. As it turned out, if we had asked for a receiver, the moment the Secretary of the Interior determined as he did, we would have been compelled to go into court and say that "the Government has no standing now, and we will withdraw this suit."

Mr. JEFFERIS. And then ask for an appropriation for the expenses of the suit?

Mr. RITER. Is that all?

The CHAIRMAN. That is all.

#### **ADDITIONAL TESTIMONY OF MR. JAMES A. FINCH, ATTORNEY IN CHARGE OF PARDONS, DEPARTMENT OF JUSTICE.**

Mr. HOWLAND. I am calling Mr. Finch, Mr. Chairman, on specification No. 12, subdivision No. 2, known as the George Meyers pardon case.

The CHAIRMAN. You have been sworn in this case, Mr. Finch?

Mr. HOWLAND. I think so.

Mr. FINCH. Yes, sir; I have been sworn.

The CHAIRMAN. There is no necessity for swearing witnesses more than once.

Mr. HOWLAND. Mr. Finch, you have already given your name and your position. You are the pardon attorney of the Department of Justice?

Mr. FINCH. I am.

Mr. HOWLAND. Has your attention been called to an alleged pardon that was granted to George Meyers, which was really a commutation, perhaps, by the President?

Mr. FINCH. It has.

Mr. HOWLAND. Will you state to the committee the facts in connection with that Meyers transaction—and make it as short as possible, and do not go through the whole history of it; just tell the committee what there is to it, and how he happened to be pardoned.

Mr. FINCH. Meyers was a prominent manufacturer in Ohio; he had maintained improper relations with a girl, and the woman had borne him a child. Meyers, as I say, lived in Ohio, and the girl lived in Pittsburgh, Pa., where the child was born. Meyers had occasion frequently to pass through Pittsburgh, at which times he saw the girl.

After a time the girl's mother died, and she moved to Ohio and lived with her sister; finally she determined to set up housekeeping for herself; went to Pittsburgh, moved her furniture, which had been stored, to Ohio; and the only connection Meyers had with that transaction, and the only ground upon which he was convicted or charged, was that he furnished the money with which this woman transported her furniture from Pittsburgh to Ohio—from Pittsburgh to Ohio. He did not accompany her on that trip, have improper relations with her on that trip, or have anything to do with her concerning the moving of the furniture, except that she desired to move her furniture and claimed that he had given her \$25 for that purpose. That is all there is to the white slave charge. In addition to this, all former offenses have been outlawed, and this one transaction would have been outlawed three days later.



The CHAIRMAN. How do you make a charge under the Mann Act under those circumstances?

Mr. FINCH. Well, I never saw that point myself, and have insisted all along that Meyers should be pardoned.

Mr. GOODYKOONTZ. What is the period of limitation?

Mr. FINCH. Three years. The Attorney General, however, did not agree, and Meyers went to the penitentiary and served, in all, I think, 18 months. Meyers received his five-year sentence. He was not pardoned, but the sentence was commuted to three years.

Mr. HERSEY. By whom?

Mr. FINCH. By President Harding, upon the recommendation of the Attorney General, which recommendation I wrote and which recommendation I had a hard job—I found difficulty in getting the Attorney General to sign. The man was afterwards—after serving 18 months he was released on parole.

The CHAIRMAN. I am not able to figure out how that would make a violation of the Mann law.

Mr. FINCH. I never could see it. A woman might enjoy having a cook stove or something of that kind moved from Pennsylvania to Ohio.

Mr. GOODYKOONTZ. He was charged with bringing a woman from Pittsburgh into Ohio for purposes of prostitution. That is the position, I suppose.

Mr. FINCH. But the woman was already in Ohio and living in Ohio. She did not have to have her furniture there.

Mr. JEFFERIS. It was really a charge for moving the furniture, then, was it?

Mr. HOWLAND. What arrangement had been made, if you know, with reference to supporting this woman and the child by Mr. Meyers?

Mr. FINCH. Mr. Meyers at the time was contributing \$80 a month for the support of the wife and child.

Mr. FOSTER. At what time?

Mr. FINCH. At the time of the prosecution and long before it.

Mr. MICHENER. You mean the woman and the child?

Mr. FINCH. The woman and child. Finally the woman demanded a large sum of money, I think \$25,000. Meyers refused to give it. He was indicted, was not informed of his indictment but the woman was permitted to continue her demands for money for nearly a year before Meyers was prosecuted. After conviction the court withheld sentence for three months, during which further demand was made for money.

Mr. FOSTER. By the woman?

Mr. FINCH. By the woman. Eventually he put up \$12,000 in the hands of a banker, the income of which was to go to the boy, the child, until he was 21 years of age, when he was to receive the full sum, and provision was made that in case of his death the mother should receive the money. Under these circumstances it seemed to me that the ends of justice had been fully met and that he was fully entitled to a commutation to three years.

Mr. MICHENER. You ought to have had the district attorney serve the rest of the time.

Mr. FINCH. I told the district attorney to his face that—I wish I could recall the words; I can't.

Mr. FOSTER. Well, what did you tell him?

Mr. FINCH. I wish I could remember it. It was eloquent.

Mr. HERSEY. The only connection the present Attorney General Daugherty had with the matter was he advised that there should be a parole?

Mr. FINCH. The Attorney General advised the President to commute the sentence.

Mr. HERSEY. That means a parole?

Mr. FINCH. No.

The CHAIRMAN. No; it means reducing the sentence from five to three years.

Mr. FINCH. Commutation is a shortening of the term.

Mr. HERSEY. Was there a parole in the matter?

Mr. FINCH. A parole was granted by the parole board, and the Attorney General, of course, approved the parole.

Mr. HERSEY. He approved the parole?

Mr. FINCH. Yes, sir.

Mr. HERSEY. He first recommended a commutation of the sentence, which was granted by the President?

Mr. FINCH. Yes.

Mr. HERSEY. Afterwards the parole board recommended the parole and the Attorney General consented to it?

Mr. FINCH. That is right.

Mr. HERSEY. That is the only connection he had with the matter?

Mr. FINCH. That is all.

Mr. HOWLAND. That is all, Mr. Finch.

The CHAIRMAN. Have you got anyone who will only occupy a few minutes?

Mr. HOWLAND. I believe not, Mr. Chairman.

The CHAIRMAN. It is now 15 minutes of 6 and we will adjourn until 10.30 tomorrow morning.

(Whereupon, at 5.45 o'clock p. m. the committee adjourned until 10.30 a. m., Thursday, December 21, 1922.)

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COMMITTEE ON THE JUDICIARY,  
HOUSE OF REPRESENTATIVES,  
*Thursday, December 21, 1922.*

The committee met at 10.30 o'clock a. m., Hon. Andrew J. Volstead (chairman) presiding.

The CHAIRMAN. Are you ready to proceed, Mr. Howland?

Mr. HOWLAND. Mr. Chairman, I would ask the leave of the committee to depart from the regular order and put Colonel Anderson on the stand, because he has to catch a train to leave the city. We will turn to page 74 of serial 41, the Briggs & Turavis matter.

The CHAIRMAN. There will be no objection to that.

Mr. BIRD. What specification is that?

Mr. HOWLAND. Specification 14, subdivision No. 1, page 74. If you have the same print that I have, it will be page 62; that is the committee print.

Mr. GOFF. It starts on page 73.

Mr. HOWLAND. Yes; it starts on page 73; but the Briggs & Turavis matter is taken up on page 74.

**TESTIMONY OF HON. HENRY W. ANDERSON, SPECIAL ASSISTANT TO THE ATTORNEY GENERAL, WAR TRANSACTIONS SECTION, DIVISION OF ORDNANCE CONTRACTS.**

Mr. HOWLAND. Will you state your name?

Mr. ANDERSON. Henry W. Anderson.

Mr. HOWLAND. And your present business?

Mr. ANDERSON. I am a lawyer, and at present special assistant to the Attorney General, in charge of the office relating to ordnance contracts in the war transactions section, Division of Ordnance Contracts.

Mr. HOWLAND. Has your attention been called to this Briggs & Turavis matter in the specifications here?

Mr. ANDERSON. It has.

Mr. HOWLAND. Will you state as briefly as you may, Colonel, to the committee here the exact situation with regard to that matter, and the present status thereof.

Mr. ANDERSON. The claim of the Government against Briggs & Turavis, of Chicago, arose out of two contracts for the sale of surplus steel left over from the war. The amount of those contracts—the two contracts were made in November, 1919, and they called for the sale by the Government to this firm, one of 20,000 tons, and the other of 80,000 tons, and any other steel that might be declared surplus.

The actual delivery was something over 90,000 tons, and the value, at the price fixed of \$24 and some cents—I forget the fraction—was \$1,842,000.

When the matter was referred to the department by the War Department there was claimed to be a balance due by Briggs & Turavis of approximately \$500,000, subject to certain credits which they claimed in the accounting. You will understand that it involved a great many details of delivery of steel in carload lots, or less than carload lots, from various projects all over the United States; and the accounting was extremely elaborate. The claim was assigned to the war transactions section on the 28th of July, 1922. It was taken up for immediate investigation——

The CHAIRMAN (interposing.) In the war transactions——

Mr. ANDERSON. War transactions section.

The CHAIRMAN. You mean that is in the War Department?

Mr. ANDERSON. No, sir; in the Department of Justice.

The CHAIRMAN. I did not recognize the name. I thought that was known as the war contract section.

Mr. ANDERSON. This war transactions section is what deals with what are commonly known as war frauds.

Mr. GOODYKOONTZ. That case came over to you in July?

Mr. ANDERSON. That came to us in July, and was referred to me on the 28th of July, 1922. I assume that you are familiar with the organization of that section. It was taken up for immediate investigation, and referred to Major Condor, of Indiana, my assistant, who went at once to Chicago to investigate the facts. On August 17 we made the demand for the payment of this money, balance due, as shown by the War Department, of some \$500,000, subject to certain small credit which I was not complied

with, and on August 25, 1922, a declaration was prepared for the institution of suits in the United States court in Chicago.

Upon the serving of notice that we were going to bring suit, counsel for Briggs & Turavis asked for a hearing, and claimed that they had never had a hearing in the case. I immediately replied that any citizen of the United States was entitled to a hearing before he was sued, and if they would come to Washington, they would be given a hearing at once. They were given a hearing within a few days thereafter, and then filed briefs.

They claimed offsets against the Government accounting amounting to very large sums of money, several hundred thousand dollars, in the accounting; and in addition, asserted a claim for over \$1,000,000, on account of the failure of the Government to deliver steels declared as surplus. That is, they claimed that the Government had actually declared as surplus some 200,000 tons of steel, to which they were entitled, but that, as a matter of fact, it only delivered to them less than 100,000 tons, and that the loss to them by virtue of the failure to make delivery of the steel declared surplus, some of which they had resold, aggregated over \$1,000,000, which, of course, would have left the Government indebted to them by over \$500,000. I stated to them that the department could not consider that claim at all; that it would have to go through the Treasury Department in the usual course, and be taken up in the Court of Claims as a claim for damages against the Government for failure to deliver, and could not be involved in this settlement; that they had to pay the Government what they owed it.

So, after several conferences, in which the advisory council sat in with me—Judges Biggar and Carr—on the case, we stated to those men very plainly that they must pay the \$500,000 at once.

They then claimed certain items of account. We had bonds under these two contracts, one for \$100,000, and one for \$200,000; that is, indemnity bonds for the faithful performance of the contracts; and we refused to have an audit, even, of their claims, unless they paid amounts which would reduce the indebtedness which we claimed for the Government within the \$300,000 covered by the bonds. In other words, we did not propose to rest on their credit at all. They did pay, on October 17, 1922, \$150,000, and on November 17, 1922, \$50,000, and they have since, within the last few weeks, paid an additional \$15,000, on a collateral contract.

That brought the amount of the maximum indebtedness claimed by the Government within the limit of the \$300,000 of the bonds; and we had the assent of the bonding company to the extension; and the agreement of the bonding company to protect us during the period of the extension.

So that to-day the Government is fully protected on the indebtedness by the bonds of these bonding companies, and they are perfectly good, and the credit of Briggs & Turavis as well.

We then undertook an audit upon every payment of these amounts, upon the details of their claims, of offsets and freights, and matters of that kind, in those numerous, hundreds of deliveries.

Our auditing department reported that they were entitled to certain credits upon a proper audit, bringing down the claim to something over \$400,000 odd—the exact amount is not important. There was one item of approximately \$70,000, which involved questions

of law of considerable difficulty, on the construction of the contract: and that matter was referred to the advisory council, Judges Biggar and Carr, and former Senator Thomas of Colorado, to advise us whether any or all of that item of \$70,000 should be allowed. They have not yet been able to make a final report.

In the meantime Briggs & Turavis have agreed to pay the entire balance so ascertained to be due immediately upon a report as to that item, and accept that audit.

Therefore we to-day have a balance of perhaps as much as \$250,000 due, on which there are bonds of \$300,000, and they are paying the balance due, as I understand, with interest.

Now, there was another phase of the matter—and I might say that the entire matter was handled within three months after it reached that office, to that conclusion. There was another phase of the matter, a claim of criminal prosecution—that they were subject to criminal prosecution. The claim was asserted by a man of the name of Greenberg in Chicago, who had acted as their agent, or been associated in procuring these contracts.

He had a conference with Mr. Crim, of the department, and was referred to me. He then had a conference with the advisory council, with Major Condor, and went fully into his claims.

He came to see me once, and the purpose of his visit was to get me to call off the Internal Revenue Department from examining his books on the claim that he, being a Government witness, ought to be protected from that; and I stated to him that I had nothing to do with the Internal Revenue Department, but I hoped that they would examine his books and if they found anything wrong, that they would prosecute him, and if there was nothing wrong, they had nothing to complain of. And that was the last time I saw Mr. Greenberg.

He suggested to Major Condor, as reported to me, that we would employ his son-in-law, a man of the name of Burnstein, to prosecute the case. We then found that he had a suit against Briggs & Turavis in Chicago, and that they were then in a very bitter controversy. There were certain suggestions of improper conduct on the part of two officers of the War Department, whose names, unless the committee desires them, I do not wish to mention: because we made a most careful and exhaustive investigation of all of those claims, got all the papers, and interviewed everybody concerned; and Major Condor, who personally examined into it, reached the conclusion, in which I concurred and the advisory council concurred, that there was no ground for even presenting the matter to a grand jury; and that these men, while they may have been a little indiscreet, there was not the slightest evidence of criminal conduct on their part; and therefore, unless I have to mention their names, I do not care to, because it is a reflection upon men of character and standing. There is the situation on that.

Mr. HOWLAND. You need not mention any other name than Major Wilson, whose name is mentioned in the specification.

Mr. ANDERSON. That I will mention Major Wilson's name. We reached the conclusion, in which all <sup>the</sup> <sup>advisory council</sup> <sup>concurred</sup> <sup>in</sup> <sup>handling</sup> <sup>this</sup> <sup>matter</sup> <sup>at</sup> <sup>the</sup> <sup>only</sup> <sup>evidence</sup> <sup>which</sup> <sup>would</sup> <sup>justify</sup> <sup>us</sup> <sup>in</sup> <sup>going</sup> <sup>to</sup> <sup>up</sup> <sup>to</sup> <sup>that</sup> <sup>date</sup> <sup>was</sup>



that of Mr. Greenberg; and under those circumstances we did not feel that any grand jury would be justified in indicting upon that evidence alone, nor would we be justified in asking the grand jury to indict upon that evidence alone.

And in the second place, the other cases did not present criminal cases.

Now, as to Major Wilson. Major Wilson had had something to do with the making of this contract, although he did not sign it; it was made in October, 1919. Next March, I think it was, it appeared that Mr. Briggs had loaned Major Wilson \$10,000 to enable him to capitalize or finance a company which he was then organizing, with a view to getting out of the Government service. He was no longer an officer, but merely a civilian; and he would soon be discharged, in the regular course of business, and go into business for himself.

The loan was made as a business transaction and was subsequently paid, and we have the original checks in our possession showing payment of that loan by Major Wilson; and it was long after the contract was made; it had no direct connection with it, and we could not find that it had affected in any way the transactions of the Government with Briggs & Turavis.

I think it was probably indiscreet for Major Wilson to have any dealings with people who had dealings with the Government so long as he was employed by it. He left the employ of the Government shortly after the loan was made, and subsequently paid it off, with interest at 6 per cent. But I could not find evidence on which to present that case to the grand jury, because it happened six months after the contract was made; and so far as I could find out there was no connection between the two things, and I did not think we would be justified in going to the grand jury in a case of that kind. And the advisory council concurred with me in that. And so far as I can find out, that is the case against Briggs & Turavis, and that is all there is to it. And if they have any claim against the Government they will have to go into the Court of Claims. In addition we refused to enter into any agreement with Briggs & Turavis and we are as free to prosecute them criminally or to sue them as we ever were at any time. We took the position that they owed the Government money, and must pay the Government money; and that they could have no consideration in paying the Government money they owed; and they are paying it on that basis, just as they would pay any other debt.

Mr. JEFFERIS. About how many months was it after the contract was entered into before Major Wilson borrowed this money from Briggs?

Mr. ANDERSON. The contract was made in October, 1919, and I think he borrowed the money in March, 1920, the March following, and left the service in June, and became president of the company which he used the money to finance; and he paid back the amount.

Now, we have devoted a great deal of time to trying to find if there was any connection between the two things, and we could not find any evidence that would justify the grand jury in indicting.

Mr. HOWLAND. I call your attention, Colonel, now to subdivision No. 2, on page 76, known as the United States Harness Co. Are you familiar with that matter?

Mr. ANDERSON. I am familiar with the later stages of it.

Mr. HOWLAND. Well, give us the later stages of it, then.

Mr. ANDERSON. Up to the time that it was referred to this organization, in June or July—about July, 1922—it had been handled under Colonel Goff's department, and he can tell you better of the preliminary stages.

But it was referred to us—and we found that the files were so large that it would take a cart to carry them; that it was in a state of great confusion, owing to the abnormal amount of transactions involved. When it came to me, through the advisory council, it was in charge of Judge Searles, of Illinois, who had been going over the papers.

I reached the conclusion that it was a case that required a most exhaustive study, by some man who was accustomed to deal with large transactions of that kind; and with the approval of the Attorney General, I secured Mr. Marion C. Early, of St. Louis, who had been most successful in some complicated litigation in St. Louis, involving questions of this kind, to come here—and I might say here that he gave up a practice of \$75,000 a year and came here for \$5,000, at our request, as a public duty.

He has devoted three months to a most exhaustive analysis of that case. He has now completed and tabulated the entire case. We believe that we have a good case. And it will be ready within 30 days for the institution of either criminal or civil proceedings, as may be determined. And I would not care to go any further than to say that, unless the committee desires to go further.

But there has been one of the ablest lawyers in the Department of Justice, and one of the ablest in the country, really, devoting his entire time to that case for the last three and one-half months, and it is now in first-class condition for handling.

Now, the earlier stages, Colonel Goff could explain better than I could.

Mr. HOWLAND. Thank you very much.

Mr. JEFFERIS. What became of the proceedings over there in that other court case?

Mr. ANDERSON. They are still undecided. They were argued, and the judge never decided the case. But that is a colossal part of the case and does not affect the proceedings, as I see it, either criminal or civil.

Mr. JEFFERIS. Both of these matters that you mention I happen to be interested in the investigation of.

Mr. ANDERSON. It involves a very large investigation, covering the whole of the United States; and these various plants throughout the country, involving some very large transactions; and it is not a matter that a man should jump into court in, without careful preparation; otherwise the interests of the Government will suffer, as well as the interests of others. I do not believe in starting until you are ready.

Mr. HOWLAND. I call your attention to subdivision 5, Bridgeport Brass Co., which appears in serial 41, at page 81.

Mr. ANDERSON. The Bridgeport Brass Co. is a case involving the manufacture of a large number of copper bands for shells. It is very hard for me to carry the details in mind. I have some 20 or 30 of these cases in my hands. There were a very large number of contracts, 25 or 30 perhaps, in series, for the manufacture of these copper bands and for driving bands for the Government in most of

these contracts furnished the virgin copper for the making of the copper bands. The contracts are a little indefinite in some instances as to what was intended to be scrapped and what copper the Government was to furnish.

Speaking generally, it furnished pound for pound—a pound of copper for a pound of bands. But it takes more than a pound of copper to make a pound of bands, and therefore the contractor had to furnish what was called “vehicle copper” to make up the difference; and in some cases he claimed the scrap, and in some cases he did not, or sold the scrap and reclaimed it as copper, and it went through that process. I do not think the committee would be interested in the details of these contracts, which are quite complicated.

The case was referred to us on the final contracts, in which the Bridgeport Brass Co. was paid the sum of \$700,000 or a little more, and it looked to us as if there was a very considerable overpayment.

Mr. HERSEY. When was that referred to you?

Mr. ANDERSON. It was referred about July of this year—it reached us.

The CHAIRMAN. When did it reach your department?

Mr. ANDERSON. It has been in the Department of Justice for several months under investigation. We have enormous files on it; for instance, one may be made on one contract; it is a most complicated account, and had probably been in the department for several months before it reached us in the war transactions section. It reached us, as my records show, about July.

I put two of the most experienced men in the office to work on this case, men who had been connected with and officers of the War Department, and told them to go back over the contracts—not one, but all—and see, first, if there had been any fraud, and second, for an accounting to see what was due the Government.

This settlement was very severely criticized by Major Brinkerhoff, of the War Department, as the result of a special investigation; and we have been making through the investigating officers of the Department of Justice——

Mr. HERSEY (interposing). What settlement do you allude to?

Mr. ANDERSON. This settlement with the Bridgeport Brass Co., under which they were paid \$700,000.

Mr. HERSEY. When was that done?

Mr. ANDERSON. That was done early in 1920. We have been making a most thorough and exhaustive investigation of that case. There are a great many facts about the case which require, in my judgment, that the department should go carefully to the very foundation, and not only that, but to the relationships of the various parties involved. We have practically completed—here [indicating papers in witness's hand] is the final memorandum report of two officers made to me, received two weeks ago.

The counsel for the Bridgeport Brass Co. asked for a hearing before we instituted any proceedings. The counsel is Mr. Stimson, of New York; and I took the matter up with him as soon as I received this final report and suggested a day for hearing. He was engaged in the trial of a case, going on for five weeks; and we have now an arrangement by which he expects to complete that case this week, and have a final conference with us, in which we will see if we can adjust the civil aspects.

We have also applied to the Bridgeport Brass Co. for leave to examine their accounting records for the purpose of preparing the accounts, and they have given us that leave; and we expect to send our accountants up there at once, and see if any of the material furnished by the Government was used in any other connection.

Now, I would not like to say to the committee whether there is any criminal phase of this case or not, because I do not want to express an opinion on a case that has not been finally disposed of, but it has been under daily investigation since July, by two of the ablest men in our department and two of the most experienced men in dealing with this class of cases, and it is now brought to a head and I now expect to have it disposed of, or suit brought, within 30 days, unless we are delayed in finding out whether this material was used that should not have been used by the Bridgeport Brass Co. They made copper bars and they made brass rods, and in cases growing out of contracts involving millions of dollars and thousands of transactions it takes a good deal of time to carefully go over them and see what are the rights of the Government before we prosecute those rights.

Now there has been a date set in those cases and, as I say, I expect either to have them in court or to have them settled within 30 days, unless there is some delay by the auditor.

Mr. HOWLAND. Unless there are some questions by the committee, you may be excused.

I will now call Mr. Reavis.

**TESTIMONY OF HON. C. FRANK REAVIS, ATTORNEY, WAR  
TRANSACTIONS BUREAU, DEPARTMENT OF JUSTICE.**

(The witness was duly sworn by the chairman.)

Mr. HOWLAND. Mr. Reavis, you have already given your name?

Mr. REAVIS. I have already given my name, yes.

Mr. HOWLAND. And your present occupation and business?

Mr. REAVIS. I am a lawyer connected with the War Transactions Bureau of the Department of Justice.

Mr. HOWLAND. Has your attention, in that capacity, been called to the Thomas Roberts & Co. matter, specification 14, subdivision 3, Thomas Roberts & Co., Philadelphia, and certain matters in connection with that?

Mr. REAVIS. Yes; I am in charge of that.

Mr. HOWLAND. Will you state the facts in regard to that matter, as you know them, briefly and in your own way.

Mr. REAVIS. Well, I am a little reluctant to go into the details.

Mr. HOWLAND. Do not go into them.

Mr. REAVIS. Because the information that the Government possesses has been obtained by a great deal of labor and at very large expense, and I would greatly prefer not to make many of the things in my possession public at this time.

Mr. HOWLAND. Use your judgment.

Mr. REAVIS. The Thomas Roberts & Co. matter concerns the purchase of practically all of the surplus meats held by the War Department. Many contracts with individuals and copartnerships and corporations had been made for the sale of this meat by the War Department and, in many instances, very favorable prices obtained for it.

For some reason, those contracts were largely canceled, in many instances after the meat had been delivered, and the money paid, the meat being returned to the Government and the money returned to the purchaser. Practically the entire amount was then sold to the Thomas Roberts & Co. for a sum much less than had been received for the portions that had been previously sold. This is a tremendous transaction and has many ramifications. It goes into every zone supply department in the Government. It requires a great deal of labor to get a proper set-up and account of it, and it will involve a great deal of expense to get all of the facts connected with the sale of these meats to the Roberts Co.

We have, in the war transactions division, an accounting division, very competent and very satisfactory to those who are charged with the responsibility of action, but in some of these major transactions the War Department, through its accounting and contracts division, is making an accounting on its own motion, in order that there may be revealed to the War Department all of the facts connected with the larger transaction.

One of the things of which they were to have a set-up by their own accounting division was this Roberts Co. case. My investigation revealed that fact, and I thought it unwise to duplicate the work of the War Department accounting division within the war transactions bureau of the Department of Justice. I know of some of those connected with the accounting of the War Department who are unusually competent. They have furnished me already two accountings which have been very exhaustive and very satisfactory. So I took the matter up with the Attorney General and suggested that, inasmuch as the accounting division of the War Department was eventually to make an accounting of the Thomas Roberts & Co. matter, they had better expedite that than start ours, and then we would not have to put the accounting division of war transactions on the same work; while, if we went ahead with it, eventually the War Department would also make an accounting of it, and the expense is going to be very large and it would be a pure duplication of effort.

Consequently, at my suggestion, the Attorney General took the matter up with the War Department, and their accounting division is making a set-up, upon which the war transactions bureau within the Department of Justice will act. That is not yet complete. We have a great deal of information regarding this and a great deal of work has already been done and several thousand dollars already expended, and I should be very reluctant, unless the committee desires, to go into further detail regarding it.

Mr. SUMNERS. If I may speak as one member of the committee, I do not think you ought to say anything now that will embarrass the Government in the trial of these cases.

Mr. HOWLAND. I was going to suggest it is a fact, Mr. Reavis, that this matter is under your personal charge and control and the interests of the Government are in your hands?

Mr. REAVIS. This matter has been under my personal charge for several weeks.

Mr. HOWLAND. Yes.

Mr. REAVIS. And all of the assistants connected with me have been at work on it for several weeks and are now at work on it, and the



matter will get into the courts, either civilly or criminally, or both, just as soon as we have this accounting.

Mr. GRAHAM. There certainly has been no neglect or delay?

Mr. REAVIS. Not a moment.

Mr. HOWLAND. There is one other matter, and that is No. 7 of specification No. 14, and that involves the so-called Kenyon company.

Mr. REAVIS. Is that the slicker case?

Mr. HOWLAND. The raincoat and slicker case, page 83 of the committee print and page 84 of your serial print 41. That is the Kenyon company matter for slickers and raincoats.

Mr. REAVIS. That case is in my charge.

Mr. HOWLAND. Is there some information that you can give the committee as to the present condition of that matter, without prejudicing the Government's interests?

Mr. REAVIS. That case had been under consideration by the Department of Justice for probably a year before the organization of the War Transactions Bureau, which followed the appropriation by Congress of \$500,000 to investigate and prosecute these cases. There is some \$250,000 (I am not attempting to speak accurately; only in round numbers) of an unpaid balance that is due Kenyon & Co. in that case. They have been insisting on payment for a long time. They have voluntarily turned their books over to the investigators of the Department of Justice, probably a year ago, and two sets of investigators have gone over those books. There are certain claims that the Government has against Kenyon & Co. Those claims, of course, will be determined by the facts in the case, at the trial. There is no question but what the Government owes these people an unpaid balance of at least \$250,000, and probably more.

I have not as yet made any recommendation to the Attorney General, but my present view is that I shall ask the Attorney General to permit Kenyon & Co. to go into the Court of Claims on the amount the Government owes them, and let the Government, by counterclaim, have its matters heard in the same action. There is no criminal aspect to this case at all.

Mr. SUMNERS. Mr. Reavis, if it would not embarrass you at all, why do you think that method should be pursued rather than for the Government to bring the suit in the first instance and make it possible for Kenyon & Co. to come in with their counterclaim? Now, if you think in the slightest degree that embarrasses you, you can strike my question from the record.

Mr. REAVIS. Why, the result would be practically the same, Mr. Sumners, in either event; but it is a matter of mere convenience, with reference to securing the testimony, to have this matter heard by the Court of Claims than it would be to bring suit in the Federal court in New York.

Mr. SUMNERS. It seems to me the statement you just made ought to have some additional explanation.

Mr. REAVIS. If there was any doubt, if the amount that the Government owed these people was an unliquidated matter, if there was any question such as in the case that Colonel Anderson stated a moment ago, the situation is entirely different; but there is no question as to this unpaid balance. The Government does owe it. The question is how much Kenyon & Co. owe the

Government. That is practically the only question in the case. All of the witnesses are largely local and it would be a great deal more convenient and a great deal less expensive to determine it in the Court of Claims than it would in the Federal court at New York.

Mr. GRAHAM. I understood the judge's question not to be related to the court before which it should come, but to the matter of which side should bring the suit, whether it should be brought in the name of the Government—am I right in that?

Mr. SUMNERS. No, sir.

Mr. GRAHAM (continuing). Or in the name of the other party.

Mr. SUMNERS. No, sir.

Mr. GRAHAM. It seems to me there is an established balance.

Mr. REAVIS. There is.

Mr. SUMNERS. I did not understand that the balance the Government owed was, strictly speaking, a balance; because I understood Mr. Reavis to say the amount Kenyon & Co. owed was undetermined. Of course, as long as that is undetermined, it seems to me you could not determine how much the Government owed them.

Mr. REAVIS. Of course, Kenyon & Co. claim they are not indebted to the Government in any sum at all.

Mr. SUMNERS. Then I misunderstood you.

Mr. REAVIS. And they are making, and have been making for a year, repeated demand for the payment of this money; have furnished us with all their books and all their documents for investigation, repeatedly.

Mr. SUMNERS. Then I misunderstood your statement.

Mr. HOWLAND. Unless there are some further questions by the committee, I think that is all I have to ask. I will call Mr. Williamson.

#### **TESTIMONY OF HON. RUSH H. WILLIAMSON, ATTORNEY AT LAW, DEPARTMENT OF JUSTICE, WASHINGTON, D. C.**

(The witness was duly sworn by the chairman.)

Mr. HOWLAND. This witness is called with reference to subdivision No. 12, specification 1, committee print, page 17, and page 29 of serial 41.

Give us your full name.

Mr. WILLIAMSON. Rush H. Williamson.

Mr. HOWLAND. This is the tobacco case. Mr. Williamson, have you given your name, your business, and your present occupation?

Mr. WILLIAMSON. No, sir; I have not; I have just given my name.

Mr. HOWLAND. All right; give it.

Mr. WILLIAMSON. My address is New York City; my occupation is connected with the Department of Justice to investigate alleged violations of the antitrust law.

Mr. HOWLAND. How long have you been with the Department of Justice?

Mr. WILLIAMSON. About nine years.

Mr. HOWLAND. Have you had anything to do with the tobacco matters—the tobacco cases, so called—this old dissolution decree of the tobacco company?

Mr. WILLIAMSON. Yes, sir.

Mr. HOWLAND. I want you to state in your own way the tobacco situation as you know it, as briefly as possible.

Mr. WILLIAMSON. In the first place, I will have to ask the indulgence of the honorable committee and yourself, Judge Howland, on account of a rather grave deficiency in hearing, so that if I do not respond pointedly to any question, you gentlemen will understand it is not fully grasped.

Briefly speaking, there was a decree taken in the case of the United States *v.* The American Tobacco Co. and other tobacco companies in November, 1911, in which decree there were certain injunctive provisions running against 14 domestic companies and 2 foreign companies. Of those 14 domestic companies 7 were engaged in the manufacture and sale in the United States of tobacco products. The two foreign companies were engaged in purchasing leaf tobacco in the United States and selling it principally abroad.

Ever since the entry of that decree in 1911, so far as my knowledge goes, this matter has been under the observation of the department to a greater or lesser extent. The particular matters here involved, as I understand, cover two points—that is, an allegation affecting the purchase of leaf in the leaf markets and the allegation alleging the violation of the Sherman law by a combination to maintain resale prices in the jobbing of manufactured tobaccos. Now, particularly speaking, the allegation with reference to the leaf situation arose in the summer of 1920. The then Attorney General referred to the United States attorney in the southern district of New York a complaint alleging a restraint and monopolization in the purchase of leaf, particularly in Kentucky, on account of the organization and activities of the Universal Leaf Tobacco Co. A prompt investigation was started, based upon this complaint, and in August of 1920 a partial report was rendered to the department and to the United States attorney's office in New York covering the organization and the acquisitions of the Universal Leaf Tobacco Co. of other tobacco-buying companies.

About this same time, in response to a resolution of Congress, the Federal Trade Commission began its investigation of substantially the same matters. A conference was had with these gentlemen representing the Federal Trade Commission in New York, and information which was then in the files of our investigation was made available for their use.

In December of 1920 the Federal Trade Commission rendered its report to Congress and together with it certain recommendations were made with reference to modifying and amending and adding to the old tobacco decree of 1911. This report was promptly obtained and those recommendations were given consideration, and further investigation was made of this matter through the first of the year 1921, and a further report was rendered the department in April, 1921, covering the activities and the operations of the Universal Leaf Tobacco Co. in the leaf markets with reference to its total acquisitions, and particularly with reference to its relation to those disintegrated companies who were enjoined, and likewise the two foreign companies.

After this investigation was made further consideration was given to the recommendation of the Federal Trade Commission, and like-

wise to considerations which were brought into view by our own investigations.

In the first place, the investigations as conducted and the information from no other source show any combination between the old companies and the Universal Leaf Tobacco Co. which would justify a charge of combination among them. The real question which seemed to be brought into view was whether or not (that is, leaving aside the question of whether the Universal Leaf Tobacco Co. itself is guilty of any violation of law) there was a violation of the old tobacco decree provisions, which provided in terms that the two foreign companies should not make use of a common purchasing agent, and in the same sentence, in this language, that neither one of those two foreign companies should unite in using a common purchasing agent with any one of the 14 disintegrated companies. That was the language which called for consideration.

The first doubt arose over the word "unite," as to the proper construction of the word "unite"; it was ambiguous whether or not it meant a previous concert of action among the parties who made use of a common agent, or whether a mere coincidental employment. Now, the language in the same sentence which inhibited the two foreign companies from making use of a common agent was clear in terms—a mere coincidental use. The question arose, if the same meaning was intended by the court in entering its decree, why make use of the word "unite"; why use different language.

This situation remained under consideration for some time, but in the fall of 1921, after conference with Colonel Goff, it was decided to test these matters and undertake to carry out the modifications which were suggested by the Federal Trade Commission in its report of 1920 to the effect that the old tobacco decree be reopened and a certain five-year inhibition, that is to say, a certain inhibition, against the use of common purchasing agents by the 14 disintegrated companies, which would extend for five years; that that inhibition should be renewed and, further, another provision which ran against doing business either directly or indirectly, or in the name of any subsidiary except when so advertised, that that should be enlarged. And it was decided to test the question in a contempt proceeding and to undertake to file a petition to see what could be done with the decree.

However, soon thereafter the question of the complaint against these manufacturers, charging them with a combination with jobbers to maintain resale prices was made and required the attention of the department. About the same time, likewise the Federal Trade Commission began its investigation of that same situation. This complaint required my presence in the West during the month of November and likewise in January, investigating generally the charge of this combination to maintain prices. That investigation, or rather those two investigations, as reported to the department, indicated strongly agreements among the local jobbers engaged in intrastate trade to maintain prices among themselves and indicated, to some extent, that there had been cooperation by the other manufacturers and the whole matter indicated that certain files of the Lorillard Tobacco Co. and the American Tobacco Co., containing correspondence between their companies and their officials and local jobbers

should be obtained to establish, if possible, conclusively, their cooperation with the local situation. Immediately objection was made to obtaining the files from the various companies, and the American Tobacco Co. and the Lorillard Co. tendered all their files and papers except their files with those jobbers, and their objection was based on the ground that the good will of those jobbers was very essential to their business and if they should voluntarily present those files for our examination and for the examination of the Federal Trade Commission that they would lose that good will.

Considerable negotiation went on about this matter between the department in New York and the attorneys for the tobacco companies. Finally, however, the general counsel for the American Tobacco Co. asked for a hearing in Washington. It was had in the early part of 1922 before Special Assistant Fowler, and he was rather bluntly advised that he must surrender those files.

To go back just a step: In the fall of 1921, on my return trip, I found that there were certain files of certain correspondence with the Federal Trade Commission which bore upon the situation under investigation, namely, a jobbers' combination to maintain prices. An informal visit was made to certain offices of the Federal Trade Commission. In January, 1922, the Federal Trade Commission rendered its report upon its investigation of the jobbing situation, which was given prompt consideration, and they desired, to carry out their investigation, access to some files of the Lorillard and American Tobacco Co.'s we had sought to obtain. Finally, we obtained access to those files, and as soon as agents were available they were placed under examination. In the meanwhile, acting under instructions from the department at Washington, we were undertaking to cooperate with the Federal Trade Commission in securing these files for their examination, and it was arranged in the district attorney's office in New York for a conference between the counsel for the Federal Trade Commission and counsel for these tobacco companies. That conference resulted, as far as I know, in a partial and conditional tender of those files to the Federal Trade Commission, but I am not familiar with what followed after that conference. It was decided, however, by the Federal Trade Commission to bring mandamus proceedings under the ninth section of that act to obtain access to those files, and our department was so advised and the Assistant Attorney General instructed every assistance be given the Federal Trade Commission in obtaining those files. I was advised it was important that they get a construction of the ninth section which would establish its constitutionality—advised by representatives of the Federal Trade Commission.

That brings us to about June, 1922. After that conference and in June, 1922, the Federal Trade Commission undertook to secure those files by filing a petition for mandamus in the southern district for New York. At that time those particular files were more or less in the constructive and partial actual possession of the Department of Justice. Then the question arose, if we maintained either actual or constructive possession of those files, for our examination, and the Federal Trade Commission filed its proceeding in mandamus to secure those files, whether or not <sup>†</sup> companies would not set up, in their answer, their impleader with the prayer. This fact was considered and the act was considered that the Federal Trade Commission was in response to a resolution



of Congress calling for certain information, and, to prevent embarrassment and possible entanglement of the mandamus proceedings of the Federal Trade Commission, in June sometime we suspended our examination and possession of those particular files and they filed their petition. Some time after that answer was filed by the tobacco companies, but the issue did not come to a decision until, I think, in either September or October of this year. That decision was adverse to the Federal Trade Commission and they are now preparing their appeal to the Supreme Court.

After that issue had been tried, it was felt by the department in New York that there would be no further danger of embarrassment or harassment of that proceeding, or entanglement of the proceeding in the Supreme Court, and it was decided to go ahead and continue that examination as soon as available agents could be had.

Mr. HOWLAND. Now, Mr. Williamson, has Attorney General Daugherty ever issued to you any order, written or verbal, which would prevent your investigation, your prosecution, or any action on your part, that you thought the law would warrant, in connection with this tobacco matter?

Mr. WILLIAMSON. Neither the Attorney General nor any of his assistants, in any particular, gentlemen.

Mr. HOWLAND. I think that is all.

Mr. HERSEY. You are still engaged in the investigation, are you?

Mr. HOWLAND. Oh, yes. You are still engaged on this matter?

Mr. WILLIAMSON. Yes, sir.

Mr. HOWLAND. Actively?

Mr. WILLIAMSON. Yes, sir; actively.

Mr. THOMAS. Is this Universal Tobacco Co. a foreign or a domestic concern?

Mr. WILLIAMSON. It is a domestic corporation, organized to deal in leaf tobacco, to buy it in the fields and resell it in the domestic trade and foreign trade.

Mr. THOMAS. Do you know under the law of what State it is chartered?

Mr. WILLIAMSON. I think it is Virginia. I am not quite positive, but my recollection is it is Virginia.

Mr. THOMAS. As I understood you to say, they had been quite active in Kentucky in the purchase of leaf tobacco?

Mr. WILLIAMSON. Yes, sir.

Mr. THOMAS. Was it dealing in burley or dark tobacco, or both?

Mr. WILLIAMSON. The Universal Leaf Tobacco Co., as a whole, purchases about 8 per cent, as far as our examination went, about 8 per cent of the total crop; of course divided among the various types, burley, bright, and the various types.

Mr. THOMAS. About 8 per cent. When was this corporation organized?

Mr. WILLIAMSON. In 1916.

Mr. THOMAS. Do you know whether or not part of the American Tobacco Co. is connected with it?

Mr. WILLIAMSON. No, sir. That was one of the points of investigation. We tried to ascertain whether there was any connection upon which such a charge could be based, and we could not find any evidence of that.

Mr. THOMAS. You could not find any connection between them?

Mr. WILLIAMSON. The only connection we could find between them was the fact that some of the officials of the Universal Leaf Tobacco Co. had formerly been employees of the American Tobacco Co.; that was about the only substantial connection we could find; there was no common-stock ownership that we could ascertain, no common control that we could ascertain.

Mr. HOWLAND. We will now go to No. 17, page 23, of the committee print.

**TESTIMONY OF HON. HERMAN J. GALLOWAY, SPECIAL ASSISTANT TO THE ATTORNEY GENERAL, WASHINGTON, D. C.**

(The witness was duly sworn by the chairman.)

Mr. HOWLAND. Give your full name.

Mr. GALLOWAY. Herman J. Galloway.

Mr. HOWLAND. And your business?

Mr. GALLOWAY. I am a lawyer, employed as special assistant to the Attorney General.

Mr. HOWLAND. How long have you been so employed?

Mr. GALLOWAY. I have been so employed since March, 1920.

Mr. HOWLAND. Has your attention been called to subdivision No. 17, specification No. 1, wherein it is alleged that the Attorney General has neglected and refused to prosecute the National Malleable Castings Co.?

Mr. GALLOWAY. It has.

Mr. HOWLAND. Is that company under your charge, and are you familiar with the matter?

Mr. GALLOWAY. I am.

Mr. HOWLAND. Will you state the situation with regard to that?

Mr. GALLOWAY. The situation is that the alleged violations of the antitrust laws by this association were called to the attention of the department by outside sources, people in the industry, and following that the Attorney General authorized an investigation to be made. The investigation was made by a special agent of the Bureau of Investigation of the department, and he has filed a report, which was delivered to me the first part of October, I believe the date, to be exact——

Mr. MONTAGUE (interposing). Of this year?

Mr. GALLOWAY. Of this year—October 7, of this year, and the same is now in possession of the department and is being given consideration, and we have arrived at no definite conclusion as yet.

Mr. HERSEY. The charge is that the evidence collected by the Federal Trade Commission was forwarded to the Department of Justice over three years ago—October 28, 1919.

Mr. GALLOWAY. Of course I was not in the department at that time. But I have never seen any files of the Federal Trade Commission on this case.

Mr. HERSEY. You admit the allegation of the date?

Mr. HOWLAND. No, we do not. We do not know that we ever got those files at all.

Mr. GALLOWAY. I have ne

Mr. HOWLAND. We can n

Mr. HERSEY. You can not find the files?

Mr. HOWLAND. No.

Mr. GALLOWAY. And the investigation that was made by the Department originated through the complaints of persons or corporations in the industry.

Mr. CLASSON. How do you know that?

Mr. GALLOWAY. I talked with some of the representatives when they first came to the department. They came to see the Attorney General, and he called me and asked me to talk with them, which I did.

Mr. CLASSON. Is that the only information in the department?

Mr. GALLOWAY. Well, of course, I do not have charge of the files, but that is the only information I have been able to find.

Mr. CLASSON. That is all you have been able to find?

Mr. GALLOWAY. Yes, aside from the investigation we made following that.

Mr. MONTAGUE. Have you had a search made for the files?

Mr. GALLOWAY. I have.

Mr. MONTAGUE. And you failed to discover them?

Mr. GALLOWAY. I did not discover them.

Mr. HOWLAND. Mr. Galloway, supposing the file had come over there containing the facts relating back to 1919—October 28——

Mr. GALLOWAY (interposing). Probably the statute of limitations would have run against such, and we would have been unable to have acted.

Mr. HOWLAND. Would you feel justified in acting on facts which existed in 1919, in 1922?

Mr. GALLOWAY. I think that it is always the custom and policy of the department to have an investigation of its own, after those things come there, so that we will know what evidence we will have to rely upon, of course.

Mr. HOWLAND. And the matter is now under your charge and under your supervision and is being attended to?

Mr. GALLOWAY. Yes. I hardly think it is proper to give the details of the case.

Mr. HOWLAND. Of course, I would not do it. I do not think the committee wants us to give details of matters that might embarrass us with reference to future proceedings.

The CHAIRMAN. When was the investigation first started, about what date?

Mr. MONTAGUE. He said the 27th of October, I understood him.

Mr. GALLOWAY. No, the report was made the 7th of October. I would say the investigation was started—and I can not be accurate in detail on this, because I have been away for three weeks in a grand jury investigation, and I just got back here this morning, but I would say the investigation started along in April, perhaps, of 1922; that is, approximately.

Mr. GRAHAM. When were those complaints made which caused the investigation to be begun?

Mr. GALLOWAY. Sir?

Mr. GRAHAM. When were those complaints made which caused the investigation to be begun?

Mr. GALLOWAY. Perhaps a couple or three weeks before the investigation was actually begun.

Mr. GRAHAM. And the report that is spoken of here, that was filed during the prior administration——

Mr. GALLOWAY (interposing). Yes, if there was any report filed.

Mr. GRAHAM. Several years before the administration went out of office?

Mr. GALLOWAY. Yes, it was filed in 1919, and the administration went out in March, 1921.

Mr. HOWLAND. We will turn now to subdivision No. 19, unless there are some further questions.

Mr. THOMAS. Yes, I want to ask, if you do not know when this report was filed, how can you say it was under the previous administration?

Mr. GALLOWAY. I say if it was filed—I do not know that it was.

Mr. THOMAS. He says he don't know when they were filed. Then I want to know how he can say they were filed under the previous administration, if he does not know when they were filed.

Mr. GALLOWAY. Of course, I can not say, as a matter of knowledge, but according to the specification they say it was filed then——

Mr. THOMAS (interposing). In other words, you are just guessing at it?

Mr. GALLOWAY. No, I do not think so. I am assuming the allegation as made in the specification is all I was going to answer, because that is what you were inquiring about.

Mr. THOMAS. You say you do not know when they were filed?

Mr. GALLOWAY. I do not know that they were ever filed.

Mr. THOMAS. Then, if you do not know they were ever filed, how can you say that they were filed during the previous administration?

Mr. GALLOWAY. Well, if it was filed in 1919, I know that was during the previous administration.

Mr. GRAHAM. That is the record before the committee.

Mr. HOWLAND. That is the specification, Judge.

Mr. THOMAS. The specification and proof are two different things.

Mr. HERSEY. It proves nothing.

Mr. HOWLAND. We do not think it does either; we quite agree with you, but we took this privilege——

Mr. THOMAS (interposing). I am not going according to the specifications; I am going according to the proof.

Mr. HOWLAND. We do not know whether it was filed then or not.

Mr. THOMAS. The man can assert anything, but that does not make it correct.

Mr. HOWLAND. Oh, no. Unless there are some further questions, Judge?

Mr. THOMAS. No; there are no further questions now.

#### IN RE SPECIFICATION 1, SUBDIVISION 19.

Mr. HOWLAND. Now, we go to subdivision 19, page 24, which calls specific attention to failure to prosecute the California Packing Corporation.

Mr. CLASSON. What is that other page?

Mr. HOWLAND. Thirty-six. That is the California Packing Corporation—are you familiar with that?

Mr. GALLOWAY. I am.

Mr. HOWLAND. Is it under your charge? State the facts briefly.

Mr. GALLOWAY. The facts in that case were that the Federal Trade Commission sent a file to the Department of Justice that they had collected in an investigation of the organization and activities of the California Packing Corporation, and referred it to the Department of Justice with a view of further investigation as to whether—or, perhaps, not further investigation so much as consideration—as to whether or not a violation of the antitrust laws existed in that company.

The files were referred to me—I am not sure whether they came to me first or some one else; but anyhow I got them ultimately; and I made an investigation of the files, and had a special agent make an investigation of other files, in order to obtain statistics to see the extent of the industry that we were investigating, and to see the extent also of the operations of the particular company under consideration to determine whether or not there was a restraint in trade and commerce or a monopoly; and after consideration came to the conclusion that there was none, and that the facts did not show any. The matter was discussed in the department with my superiors, and they were inclined to agree with me; and it was determined that there was not sufficient evidence to justify any further proceedings at that time.

Mr. GOODYKOONTZ. Was that during the period of the operation of the Lever Act?

Mr. GALLOWAY. No; I do not think it was—well, some of the facts may have been, but I do not think it generally was.

Mr. GOODYKOONTZ. The Lever Act virtually suspended the operation of the antitrust laws so far as regards foodstuffs?

Mr. GALLOWAY. Well, in a way, yes.

Mr. HOWLAND. Now, if there are no further questions we will go to specification 20.

Mr. THOMAS. How many cases were put into your hands for investigation?

Mr. GALLOWAY. I could not say Judge.

Mr. THOMAS. You do not know how many were placed in your hands?

Mr. GALLOWAY. No This particular case was turned over to me——

Mr. THOMAS (interposing). I am not asking you about this particular case; I am asking you about how many cases were placed in your hands for investigation.

Mr. GALLOWAY. I was going to explain that situation, Judge, if I may This particular case was handed to me because I was familiar with the general situation through the meat-packers' case. I was interested in that case, and the California Packing Corporation had had operations with the meat packers in unrelated lines, and I had gone into that and considered it and was familiar with the details, and in order to avoid duplication of work they thought it was best for me to handle that case, and I did so.

Mr. THOMAS. Were these cases placed in your hands for investigation prior to the 7th of April?

Mr. GALLOWAY. Yes, I think I had it before then.

Mr. THOMAS. What case did you have before that?



Mr. GALLOWAY. I had the antitrust case against the Meat Packers and I had the National Stationers Association, and I can not say now; you speak of a specific date, and it is hard for me to tell you.

Mr. THOMAS. You say they were placed in your hands April 7. Are you sure about that?

Mr. GALLOWAY. I think they were, I can not be positive, Judge, without looking into the files for that.

Mr. HICKEY. Those cases you mentioned are not cases in these abandoned charges?

Mr. GALLOWAY. No.

Mr. HICKEY. Then why should we disturb ourselves about those cases? We have trouble enough hearing testimony on those charges that have not been abandoned.

Mr. HOWLAND. The ultimate decision was that you found nothing to prosecute.

Mr. GALLOWAY. That was the decision.

IN RE SPECIFICATION 1, SUBDIVISIONS 20, 21, 23.

Mr. HOWLAND. Now, we go to No. 20, which is the Southern Wholesale Grocers Association. What do you know about that, Mr. Galloway?

Mr. GALLOWAY. There was a joint situation there concerning the Southern Wholesale Grocers Association, and Robert G. Duncan, the publisher of Duncan's Trade Register, in Portland, Oreg.; and the two go together, in a way; and I might say that the Southern Wholesale Grocers Association was interested in this meat-packer situation, and one reason why I took this case, was in order to avoid duplication of work, and as I was familiar with the general situation it was best for me to handle that case, and I did so.

The charge there was that Robert Duncan, through his Trade Register, was attacking certain manufacturers of food products, who were selling direct to chain stores or retailers, and not going through what they considered the regular channels of trade, which includes the jobber, wholesaler, etc., and he was attacking those manufacturers by the publication of articles in his magazine. It was also charged that there was some effort upon his part to publish a list of these people and, in a way, to blacklist them, people who were so selling; and it was also suspected—I think, that is as strong as you can put it—suspected that the Southern Wholesale Grocers Association was cooperating with him in some way in doing this.

We had an exhaustive investigation made by a special agent Mr. Lewis, and he reported—his report embodied rather voluminous records; and, after an investigation of his report, we came to the conclusion that there was absolutely no evidence to sustain any connection between the Southern Wholesale Grocers Association and Robert Duncan's trade organization.

Duncan was publishing more or less scurrilous articles about certain cooperative wholesale grocer organizations, and also some of the manufacturers of food products, especially J. Ogden Armour; and that was about all that there was in the case. But you could not show that he was connected with any one else, or any organization, in so doing. So, we decided that there was nothing that we could do there.

Mr. HOWLAND. In specification 21, in the Southern Wholesale Grocers' Association and in the Duncan Trade Register.

Mr. GALLOWAY. That is it.

Mr. HOWLAND. Now, we will go to No. 23 of this specification. No. 23 is the matter of the Pioneer Bindery Printing Co. Do you know about that, Mr. Galloway?

Mr. GALLOWAY. I do.

Mr. HOWLAND. Will you state briefly to the committee the facts of it?

Mr. GALLOWAY. The file came to the Department of Justice from the Federal Trade Commission upon that matter, it being felt that they were engaged in some practices which were a violation of the antitrust law. The department was at that time engaged in an investigation of the stationery business or situation, in general, in this country, especially the National Wholesale Stationers Association, and that association has a number of subsidiary or local associations which are a sort of wheels within a wheel; and because of that investigation we considered the Pioneer Bindery and Printing case in connection with the general stationery situation, not only because it related to the same business and industry, but also because their practices were similar.

We have had an exhaustive investigation made of that, and we are now considering the case and trying to determine whether or not we have a case; and if we do have a case, whether we should proceed criminally or civilly; and I might say that, incidental to that, a new feature of the case is that quite recently, after our investigation, the association has discontinued certain of the practices which we have felt were questionable. So we have other things to consider before we act, and we have not made any disposition of that, as yet.

Mr. HOWLAND. Unless there are some further questions you may be excused. I will now call Mr. Shale.

Mr. GOODYKOONTZ. Mr. Howland, how many witnesses—whose testimony has not been taken—have you?

Mr. HOWLAND. Our witnesses may not coincide with the specifications, but we have the Chicago injunction matter, which will be taken care of by Mr. Esterline; the New York, New Haven & Hartford will be taken care of by Mr. Meyers; Mr. Goff will take care of the General Electric and the Virginia Ship and the United States Harness case. Mr. Burns will testify on the Michigan Red Convention—well, six or seven witnesses, gentlemen.

Mr. HICKEY. Your other evidence is simply along the line of the specifications and answers; nothing more will be disclosed than is contained in the answers?

Mr. HOWLAND. We are going to prove every line in it.

Mr. HICKEY. The evidence is to confirm your answers?

Mr. HOWLAND. Yes.

Mr. HICKEY. Why not let them submit an affidavit?

Mr. GRAHAM. Let us hear them.

The CHAIRMAN. Let us go on.

Mr. GOODYKOONTZ. I am perfectly willing to give them such reasonable time as they may require.

Mr. HOWLAND. We can crowd this thing pretty fast.

**TESTIMONY OF HON. ROGER SHALE, SPECIAL ASSISTANT TO  
THE ATTORNEY GENERAL, DEPARTMENT OF JUSTICE,  
WASHINGTON, D. C.**

Mr. HOWLAND. Give your name.

Mr. SHALE. My full name is Roger Shale.

Mr. HOWLAND. And your business at the present time?

Mr. SHALE. I am a lawyer, a legal resident of the State of Missouri. For a number of years I have been residing in the District of Columbia. Since November, 1919 I have been a special assistant to the Attorney General.

Mr. HOWLAND. I am calling his attention, gentlemen, to subdivision No. 15, of specification No. 1, on page 22 of the committee print, and on page 34 of the serial No. 41.

Mr. Shale, has your attention been called to this specification in regard to the matter of the Mathieson Alkali Works and its relation to the Department of Justice?

Mr. SHALE. It has.

Mr. HOWLAND. What do you know about it? Tell the committee very briefly.

Mr. SHALE. In January, 1919, the Federal Trade Commission transmitted to the Department of Justice for appropriate action the papers in the matter of this particular complaint against the Mathieson Co. and several other manufacturers of soda ash. Soda ash is a chemical used largely by manufacturers of soap and glass. The papers came over the latter part of January, 1919, and were immediately referred to Mr. Myers, a special assistant to the Attorney General. Mr. Myers at once directed that an investigation be made in the field to ascertain the facts necessary to enable the department to reach a conclusion as to what action, if any, should be taken.

A short time thereafter, Mr. Myers was transferred to the office of the Solicitor General, and this particular matter was referred to me for attention. I directed the investigation in the field by agents of the Department of Justice. That covered a period of several months.

At the end of that investigation it was apparent that the complaint was not well founded. It seems that during the war soda ash became a very scarce and very expensive commodity.

The manufacturers had been accustomed to dealing directly with the consumers, and the investigation developed that some of the consumers were buying soda ash for use in their business and instead of using it, they were selling it to other consumers at a premium, and the manufacturers of soda ash endeavored to break up that practice; and our investigation disclosed that in 1919, after the war was over, the manufacturers ceased to enforce this prohibition or provision against the purchaser selling it to another consumer.

Mr. HOWLAND. Well, what I want to get at is, was a disposal made of this matter, and if so, when was it made?

Mr. SHALE. The investigation terminated in the middle of the summer, and having other things of more importance at hand, the following—

Mr. HOWLAND. What year?

Mr. SHALE. 1919.

Mr. HOWLAND. Exactly.

Mr. SHALE. In January, 1920, I filed a summary report in which I recommended that no action be taken. That report was approved by Judge Ames, who was, at that time, assistant to the Attorney General, in charge of the enforcement of the antitrust laws.

Mr. GRAHAM. That was during Attorney General Palmer's administration?

Mr. SHALE. Yes, sir.

Mr. HOWLAND. Now, Mr. Shale, what relation have you had with the investigation of the glass industry, generally, which is involved in one or two of these specifications?

Mr. SHALE. In 1919 there was conducted under my supervision a rather extensive investigation into the window-glass industry. In November, 1919, I prepared a report to the Attorney General of the results of that investigation.

That investigation involved a labor organization and it was decided by the assistant to the Attorney General, Judge Nebeker, who had discussed that feature of the case with Attorney General Palmer, that in view of the fact that it involved a labor organization it might be well to permit the matter to pass over to the next administration, that the new administration might accuse the former administration of having instituted this suit against a labor organization in order to embarrass it.

Mr. HOWLAND. Well, having passed over to this administration, which we are particularly interested in, and Attorney General Daugherty, what is the situation now with reference to the glass industry, with reference to the Government?

Mr. SHALE. Shortly after the present administration came into power, my report on the investigation of the window-glass industry was referred to the United States attorney in New York, and it was taken up by some of his assistants, and as stated by United States Attorney Hayward yesterday, an indictment was returned in the southern district of New York.

The first indictment was thrown out on demurrer, and a second indictment was subsequently returned, and is now awaiting trial, having been definitely set for a date the latter part of January of this year.

Mr. HOWLAND. You mean the coming year?

Mr. SHALE. Certainly; the coming year.

Mr. HOWLAND. Well, is there any connection with this entire matter—the glass industry—where the Attorney General has sought to control, restrict, interfere with, or stop the investigation or its prosecution, where you found it necessary?

Mr. SHALE. Certainly not. I am at present engaged in investigating and prosecuting another phase of that same subject.

#### IN RE SPECIFICATION NO. 8, SUBDIVISION NO. 4.

Mr. HOWLAND. Yesterday a letter was read into the record from a gentleman by the name of Samuel Untermeyer, in which it was said that certain matters, particularly the cement matter, had been left in incompetent hands. Are you familiar with the cement matter as well as the glass matter?

Mr. SHALE. I am quite familiar with the cement matter.

Mr. HOWLAND. Will you state the situation with regard to cement, and whether or not it has been sent to the New York district attorney?

Mr. SHALE. Certainly. Early in April, 1921, Attorney General Daugherty placed in charge of the so-called building materials cases, Mr. James A. Fowler, of Knoxville, Tenn. Those cases centered largely in New York City and in Chicago.

Mr. Fowler assigned me especially to the cement cases. It might be said that I was junior counsel, assigned to the preparation of the case.

A letter read into the record yesterday from Mr. Untermeyer to Mr. David Podell contained a statement by Mr. Untermeyer that the cement cases were in incompetent hands. The incompetent hands were Mr. James A. Fowler and myself. On behalf of Mr. Fowler, I would like to say that he is one of the leading lawyers of the State of Tennessee and I might say in the South. In the Taft-Wickersham administration of the Department of Justice, Mr. Fowler was first an assistant Attorney General; later he was appointed Assistant to the Attorney General in charge of the enforcement of the Sherman Antitrust Act; and for a short time he was acting Solicitor General. During his term of office with the Department of Justice, with the exception of the Solicitor General, whose duty it was to argue most of the Government cases in the Supreme Court, Mr. Fowler argued and won more cases in the Supreme Court than any other lawyer in the United States. Coming down to date, Mr. Fowler argued and won, in the Supreme Court, the so-called Hardwood Lumber Association case. That case has caused alleged violators of the Sherman Antitrust Act to lose more sleep than all of the other decisions in antitrust cases put together.

Mr. MONTAGUE. What was that case?

Mr. SHALE. The Hardwood Lumber case.

So much for the qualifications of Mr. Fowler. As to myself, you gentlemen will have to reach your own conclusions after I tell you what we have done.

On April 6 they put Mr. Fowler in charge. It seems that on March 3, 1921, an indictment had been returned in the Southern district of New York against practically every manufacturer of Portland cement in the United States. There were between 70 and 80 corporations, from Maine to California, and from Florida to Washington. When we went over to New York to look into the evidence in support of that indictment we were quite surprised to find that there was very little if any evidence to support it. The grand jury had returned an indictment after an inquiry of only a few hours. We reported to Attorney General Daugherty that there was a lack of evidence—an apparent lack of evidence—to sustain the charges of that indictment, and he directed us to make an immediate investigation to ascertain all the facts. Attorney General Daugherty instructed the bureau of investigation to give us all the assistance that was needed to conduct that investigation promptly. At one time there were 35 investigators working under my direction in the northeastern section of the United States. We undertook to make a drive, and simultaneously agents began investigations from Boston, New York, Philadelphia, and Washington. Within two weeks those investigators had examined upward of 100 factors and dealers who purchased and used and dealt in cement.



We reported to the Attorney General that the facts ascertained warranted both civil and criminal proceedings against the manufacturers of cement in that section of the United States.

I was first directed to prepare a petition in equity. That was filed on June 30. Now we started early in April——

Mr. HERSEY (interposing). June 30 of what year?

Mr. SHALE. June 30, 1921. We had been appointed or assigned to this particular matter in April, 1921. There are 19 manufacturers of cement in that particular section of the United States, and the investigation necessitated making inquiry into the activities of those corporations back as far as 1909. It was something that could not be done in two or three weeks, but a petition in equity was filed on June 30 against 19 corporations, and several individuals who were officers of the Cement Manufacturers' Association, the instrumentality through which it is charged that this violation of law was accomplished.

Shortly after the filing of the petition in equity I was directed to present the matter to a grand jury in the Southern District of New York. On August 8 an indictment was returned in New York City against 19 corporations and 44 individual defendants.

Simultaneously with those investigations in New York we were investigating in the South, in Chicago, in Kansas City, San Antonio, and Denver, Colo.

I might say that there are a number of these associations. The Mid-West Association has its headquarters at Chicago; the Southern Statistical Bureau at Atlanta, Ga.; the so-called Norcross Bureau at Kansas City, Mo.; and there is the Cement Securities Co. at Denver, Colo.

Mr. HOWLAND. This is all interesting, of course, but the point I want to bring to the attention of the committee, and the reason why we have introduced this witness, really goes beyond the matter he is talking about now to subdivision No. 4 of specification No. 8, on page 45 of the committee print and page 57 of your print. The allegation there is that Attorney General Daugherty——

Mr. FOSTER (interposing). I think we might as well take a recess now.

The CHAIRMAN. We will recess until 1.30 this afternoon.

#### **CERTAIN PAPERS REQUESTED BY HON. ROY O. WOODRUFF.**

(Mr. Seymour submitted the following papers for the record with the statement that they were furnished at the request of Mr. Woodruff:)

Before Congress had by act of appropriations provided special funds for the prosecution of this work these cases had been handled under the direction of the Attorney General by the following: The Assistant to the Attorney General, assistant attorneys general, special assistants to the Attorney General, United States attorneys, attorneys and assistants, and their clerical forces, Assistant to the Attorney General Guy D. Goff, Assistant Attorney General Crim, Assistant Attorney General Lovett, Assistant Attorney General Riter, Assistant Attorney General Ottinger, Assistant Attorney General Willebrandt, Marcus W. Borchardt, Charles B. Brewer, Miller Hughes, J. J. Lenihan, James N. Linton, P. J. Mullen, Oliver E. Pagan, Heber H. Rice, Charles J. Searle, J. A. Tellier, William S. Ward, George E. Kelleher, M. C. Masterson, H. A. Fisher, George E. Strong, H. W. Ameli, Leland B. Duer, Fletcher Dobyns, Royal Victor, Victor House, F. B. Crosthwaite, Paul W. Kear, C. F. Jones, F. E. Scott,

George H. Foster, Miller, Ferguson and Hunter, J. F. Staley, Percy M. Cox, United States Attorney Carmen, A. H. McCormick, A. F. Myers, United States attorneys of the various districts.

The Attorney General appointed the following additional special assistants and clerical force to assist in the prosecution of these cases:

- Roscoe C. McCulloch, Esq., special assistant to the Attorney General, May 10, 1922.
- William M. Offley, Esq., special assistant to the Attorney General, May 31, 1922.
- Charles S. Thomas, Esq., special assistant to the Attorney General, May 31, 1922.
- Henry W. Anderson, Esq., special assistant to the Attorney General, June 1, 1922.
- William T. Chantland, Esq., special assistant to the Attorney General (assistant to Mr. McCulloch), June 1, 1922:
- C. Frank Reavis, Esq., special assistant to the Attorney General, June 5, 1922.
- James Cameron, Esq., director of accounting investigation, June 5, 1922.
- Charles L. Downing, Esq., special assistant to the Attorney General, June 5, 1922.
- F. Donald Enfield, Esq., special assistant to the Attorney General (assistant to Mr. Reavis), June 5, 1922.
- Ernest J. Wessen, Esq., accountant (assistant to Mr. McCulloch), June 5, 1922.
- Harry E. O'Neill, Esq., special assistant to the Attorney General (assistant to Mr. Reavis), June 5, 1922.
- Meier Steinbrink, Esq., special assistant to the Attorney General, June 6, 1922.
- Alfred G. Armstrong, Esq., special assistant to the Attorney General, June 6, 1922.
- R. R. Farr, Esq., special assistant to the Attorney General (assistant to Colonel Anderson), June 10, 1922.
- Beverly A. Davis, Esq., special assistant to the Attorney General (assistant to Colonel Anderson), June 10, 1922.
- John G. Winston, Esq., special assistant to the Attorney General (grand-jury stenographer), June 12, 1922.
- Julian I. Marks, Esq., accountant investigator, June 16, 1922.
- Judge T. M. Bigger, special assistant to the Attorney General, June 24, 1922.
- Judge Charles Kerr, special assistant to the Attorney General, July 20, 1922.
- William Ellis Zimmerman, accountant, September 7, 1922.
- L. E. Kiefhaber, accountant, September 8, 1922.
- H. J. Simmons, accountant, September 12, 1922.
- Allen G. Roselle, accountant, September 13, 1922.
- Roy D. Spaulding, accountant, September 13, 1922.
- Addie M. Harr, accountant-clerk, September 12, 1922.
- A. A. Catterall, accountant, September 21, 1922.
- Joseph H. Fraser, accountant, September 21, 1922.
- R. Bryan Gilliland, accountant, September 21, 1922.
- John F. O'Hare, accountant, September 21, 1922.
- Harry C. Ovitt, accountant, September 21, 1922.
- James M. Horn, accountant-engineer, September 25, 1922.
- J. Ray Adams, secretary and assistant to C. R. Thomas, June 10, 1922.
- Agnes L. Brown, chief file clerk, June 12, 1922.
- M. Helena Pray, secretary-stenographer, June 16, 1922.
- Richard L. Merrick, clerk and investigator, June 20, 1922.
- Mrs. Josephine Grabill, stenographer, June 23, 1922.
- Mrs. Marion B. Lake, stenographer, June 26, 1922.
- John O. Dice, stenographer, June 27, 1922.
- Vieva Marie Cleavenger, typist, July 1, 1922.
- Helen C. Hironimus, stenographer, July 1, 1922.
- Ruth C. Leslie, stenographer, July 1, 1922.
- Margaret M. Kelly, special employee, July 6, 1922.
- Robert M. Moore, file clerk, July 16, 1922.
- Paul S. Dodson, Esq., special assistant to the Attorney General, June 16, 1922.
- Arthur Carnduff, Esq., special assistant to the Attorney General, August 14, 1922.
- Henry A. B. Schwartz, Esq., special assistant to the Attorney General, September 1, 1922.
- Paul J. Mullen, Esq., special assistant to the Attorney General, September 16, 1922.
- Archie M. Shipe, Esq., special assistant to the Attorney General, August 23, 1922.
- J. Herbert Cole, Esq., special assistant to the Attorney General, September 14, 1922.
- Joseph Milton Day, special law clerk, August 26, 1922.
- J. Harold Smith, Esq., accountant, June 27, 1922.
- John F. A. Merrill, Esq., special assistant to the Attorney General, June 29, 1922.
- W. J. Peck, Esq., expert accountant, July 1, 1922.
- William H. Lowe, Esq., accountant, July 5, 1922.

Richard V. Johns, Esq., expert bank accountant, July 10, 1922.  
 Vernon W. Cannon, Esq., accountant, July 11, 1922.  
 George Pendleton Hoover, Esq., special assistant to the Attorney General, July 12, 1922.  
 Ralph E. Moody, Esq., assistant attorney, July 12, 1922.  
 George W. Storck, Esq., special bank accountant, July 16, 1922.  
 Homer W. McCally, Esq., accountant-stenographer, July 18, 1922.  
 Henry W. Maynard, Esq., engineer-accountant, July 18, 1922.  
 Howard P. Page, Esq., accountant, August 9, 1922.  
 John E. Kelley, accountant-stenographer, August 16, 1922.  
 W. O. Hickok, engineer-accountant, August 19, 1922.  
 R. B. Smith, accountant, August 28, 1922.  
 E. J. Armbruster, accountant, September 1, 1922.  
 Marjorie T. Baggaly, secretary-stenographer, July 16, 1922.  
 Dorothy D. Lewis, secretary-stenographer, July 16, 1922.  
 Olive B. Johnston, typist, August 1, 1922.  
 James A. Martindale, special employee (chief messenger), June 12, 1922.  
 Vincent A. Sheehy, messenger boy, July 7, 1922.  
 Walter K. Caldwell, special employee (messenger) August 16, 1922.  
 Mrs. Florence Austin, stenographer, September 13, 1922.  
 Ralph Kelly, stenographer, September 25, 1922.  
 Marion C. Early, special assistant to the Attorney General, September 25, 1922.  
 Elizabeth Farrell, stenographer, August 21, 1922.  
 Herbert E. Hadley, special assistant to the Attorney General, December 12, 1922.  
 Edwin S. McCrary, special assistant to the Attorney General, November 29, 1922.  
 Robert E. McClure, special assistant to the Attorney General, October 2, 1922.

## LIST OF ANTI-TRUST CASES—HARDING ADMINISTRATION.

## TITLE OF CASE AND DATE OF INSTITUTION.

[The \* immediately preceding the title indicates a criminal action.]

1. United States *v.* Kern et al., March 8, 1921.
2. United States *v.* American Coated Paper Co. et al., March 14, 1921.
3. United States *v.* American Lithographic Co. et al., March 26, 1921.
- \* 4. United States *v.* James B. Clow & Sons et al., April 1, 1921.
- \* 5. United States *v.* Chicago Master Steam Fitters' Association et al., April 30, 1921.
- \* 6. United States *v.* Louis Biegler & Co., et al., April 30, 1921.
7. United States *v.* Cement Manufacturers Protective Association et al., June 30, 1921.
- \* 8. United States *v.* Atlas Portland Cement Co. et al., August 8, 1921.
- \* 9. United States *v.* Alexander & Reid Co. et al., August 31, 1921.
- \* 10. United States *v.* Andrews Lumber & Mill Co. et al., September 2, 1921.
- \* 11. United States *v.* Atlantic Terra Cotta Co. et al., September 28, 1921.
- \* 12. United States *v.* The American Terra Cotta & Ceramic Co. et al. (S. D. of N. Y.), September 28, 1921.
13. United States *v.* Hiram Norcross et al., October 25, 1921.
14. United States *v.* Mid West Cement Credit Statistical Bureau et al., October 24, 1921.
- \* 15. United States *v.* Johnston Brokerage Co. et al., November 28, 1921.
- \* 16. United States *v.* Central Foundry Co. et al., December 28, 1921.
17. United States *v.* Cement Securities Co. et al., January 10, 1922.
18. United States *v.* Tile Manufacturers' Credit Association et al., January 10, 1922.
19. United States *v.* National Enameling & Stamping Co. et al., February 14, 1922.
20. United States *v.* Bricklayers', Masons', and Plasterers' International Union of America et al., February 28, 1922.
- \* 21. United States *v.* United Gas Improvement Co. et al., March 6, 1922.
- \* 22. United States *v.* Lehigh Portland Cement Co. et al., March 9, 1922.
- \* 23. United States *v.* American Window Glass Co., Johnston Brokerage Co. et al., March 17, 1922.
24. United States *v.* Wickwire Spencer Steel Corp. et al., March 20, 1922.
- \* 25. United States *v.* American Terra Cotta & Ceramic Co. et al. (Northern District of Illinois), March 27, 1922.
26. United States *v.* United Gas Improvement Co. et al., April 20, 1922.
- \* 27. United States *v.* Trenton Potteries Co. et al., August 8, 1922.
28. United States *v.* A. Schraders' Sons (Inc.), August 31, 1922.

29. United States *v.* Railway Employees' Department of the American Federation of Labor et al., September 1, 1922.

\* 30. United States *v.* C. C. Handley, president, Machinists' Union, Houston, Tex., et al., September 27, 1922.

31. United States *v.* Fur Dressers' & Fur Dyers' Association (Inc.) et al., November 8, 1922.

32. United States *v.* Richard Hudnut (Inc.), November 8, 1922.

**LIST OF ACTIONS INSTITUTED FOR THE UNITED STATES GOVERNMENT BY THE ATTORNEY GENERAL AND ATTORNEYS OF THE WAR TRANSACTIONS SECTION SINCE JUNE 1, 1922; ALSO SETTLEMENTS OUT OF COURT.**

United States *v.* John L. Philips, John Stephens, et al. Bill of indictment filed July 18, 1922; approximately \$1,000,000.

United States *v.* Chemical Foundation (Inc.). Bill in equity filed September 8, 1922; \$10,000,000 to \$100,000,000.

United States *v.* Ernest C. Morse, Everly M. Davis, and Alexander W. Phillips. Old Hickory case indictment filed August 7, 1922; approximately \$1,000,000.

Complaint suit, United States *v.* Dayton Airplane Co., filed Thursday, October 12, 1922; \$2,408,267.41.

Cleveland Brass & Copper, October 20, 1922, bill of complaint; \$454,188.12.

United States *v.* Briggs & Turivis, \$482,000; check in part payment received October 17, 1922 (\$150,000).

United States *v.* Derby Manufacturing Co. Terms of settlement agreed on November 8, 1922; \$670,000.

**CAMP CASES.**

United States *v.* A. Bentley & Sons, suit for \$5,000 filed November 24, 1922, southern district of Ohio.

United States *v.* Hardaway Construction Co., suit for \$6,500,000 filed November 24, 1922, southern district of South Carolina.

United States *v.* Thompson Starrett Co., suit for \$6,000,000 filed November 24, 1922, eastern district of New York.

United States *v.* Geo. A. Fuller Co., suit for \$4,000,000 filed November 24, 1922, district of Kansas.

United States *v.* Stone & Webster, suit for \$5,000,000 filed December 4, 1922, district of Massachusetts.

United States *v.* Irvin & Leighton, suit for \$6,500,000 filed December 4, 1922, district of New Jersey.

United States *v.* Porter Bros., suit for \$5,000,000 filed December 4, 1922, eastern district of Michigan.

United States *v.* Rinehart & Dennis, suit for \$7,000,000 filed December 4, 1922.

United States *v.* Stewart & McGehee, suit for \$3,000,000 filed December 4, 1922.

United States *v.* Chas. Weitz & Sons, suit for \$1,500,000 filed December 4, 1922.

**CASES IN VARIOUS DISTRICT COURTS.**

American & British Manufacturing Corporation (in hands of receivers). Government's verified claim filed November 30, 1921. Southern New York.

American & British Manufacturing Corporation (in hands of receivers). Government's verified claim filed. Connecticut.

United States *v.* American Agricultural Chemical Co., United States Fuel & Supply Co., and Solvay Process Co. Eastern Michigan. Argued before circuit court of appeals, Cincinnati, October 9, 1922.

American Zylocq Co. (defendant in bankruptcy). Government's verified claim filed November 9, 1922.

Alart & McGuire (in hands of receiver). Southern New York. Government's verified claim filed January 20, 1922.

American Machine Corporation (in bankruptcy). Eastern Michigan. Government's verified claim filed June, 1921.

Alitak Packing Co. At issue and ready for assignment for trial September 22, 1922.

Abercrombie Packing Co. Government's verified claim filed September 16, 1920.

Atco Garment Co. On list for trial term, 1922.

Butterworth-Judson Corporation. Bill filed December, 1922.

Brown Products Co. (in hand). Bill filed, distribution being made November 6, 1922.

Brewer-Titchener Corporation. Bill filed October 19, 1922.

- George Bokio *v.* United States. Judgment for United States May 2, 1922; costs.
- Bell Manufacturing Co. (in bankruptcy). Two claims filed 1919.
- William J. Boardman. Complaint filed November 6, 1922.
- Brady & Gioe. Libel in admiralty filed January, 1922.
- Billings & Spencer Co. Complaint filed on January 13, 1921.
- Byer & Sons. Suit filed January 19, 1922.
- Carter-Weeks Stevedoring Co. Suit filed October 5, 1922.
- Columbia Smelting & Refining Co. Suit filed June 14, 1921.
- Connecticut Brass & Manufacturing Co. Petition filed July 21, 1921.
- Columbiaville Woolen Co. Suit filed November 3, 1921.
- Charleston Chemical Co. Suit instituted June 23, 1922.
- R. T. Clark & Co. Suit filed March, 1921.
- Chesapeake Ferry Co. Libel filed November 5, 1921. (Admiralty.)
- United States *v.* Columbia Salmon Co. Complaint filed December, 1921.
- Chapham Machine & Tool Works. Suit filed June 16, 1922.
- Dewart Milk Products Co. Suit filed August 15, 1922.
- Daily Towing Line Co. (in bankruptcy). Claim filed in 1922. Check received in settlement October 2, 1922.
- Dusenbergs Motors Corporation. Claim filed with receivers on September 28, 1922.
- Eyak River Packing Co. and American Surety Co. Suit filed October 13, 1921.
- East Wilton Woolen Co. Suit filed April 25, 1921.
- Yacht *Eleanor*. Libel in admiralty August 25, 1922.
- Erickson, C. J. Complaint filed October 11, 1921.
- Fox & Gatewood. Suit filed November 17, 1921.
- James F. Fay. Suit filed July 7, 1922.
- F. N. Graves & Co. Suit filed May, 1921.
- F. M. Grimes, jr. Petition filed April 12, 1922.
- N. Z. Graves Real Estate Co. and United States Fidelity & Guaranty Co. United States attorney directed to institute suit April 15, 1920. Case at issue November 18, 1921.
- E. Hogshire Sons & Co. Suit filed April, 1922.
- P. E. Harris & Co. Suit filed October 13, 1922.
- Homeway Process Fruit Co. Proof of claim filed in bankruptcy August 23, 1922.
- A. Hoefner & Sons. Suit filed January 4, 1921.
- James M. Hart. Suit filed November, 1921.
- L. H. Hull. Suit filed April, 1922.
- Illinois Smelting & Refining Co. Suit filed March 21, 1922.
- Joseph W. Isherwood. Bill in equity filed September 20, 1922.
- Jorband Bros. Lbr. Co. Suit filed November 8, 1921.
- Jones Bros. Suit filed April 5, 1922.
- Harry E. Lazarus. Petition filed January 16, 1922.
- Kenviel Clothing Co. Suit filed May 25, 1922.
- Kenai Packing Co. Suit filed June 20, 1921.
- Lenigan Uniform Co. and American Surety Co. of New York. November, 1921, suit filed.
- Frank Lane Co. Suit filed June 30, 1922.
- J. Lipsitz, Co. (Inc.). Suit filed July 7, 1922.
- M. Linsky & Bros. Suit filed July 7, 1922.
- Mueller Metals Co. June 4, 1921, suit filed.
- Jacob Manowitz & Sons. Filed counterclaim in Court of Claims.
- Mossbacher & Co. and Aetna Casualty & Surety Co. Suit filed April 13, 1921. Now at issue.
- Madison Trading Co. Suit filed January 26, 1922.
- J. J. Matthews & Co. Suit filed December 9, 1920. June 7, 1921, writ of error to Circuit Court of Appeals. September 19, 1921, heard in Circuit Court of Appeals.
- Motor Trucks (Ltd.). Writ issued January, 1920. Defendants served notice of appeal September 13, 1920. April 28, 1922, court of appeals dismissed the action. Appeal taken to privy council in England.
- John W. McCarthy, jr., & Co. January, 1922, proof of claim filed in bankruptcy court.
- North Alabama Manufacturing Co. Bankruptcy. Claim filed February 13, 1921. Paid in full June 2, 1921.
- New York Metal Trading Co. Suit filed June, 1919. Judgment July, 1922.
- Nassau Smelting & Refining Co. Suit filed September 16, 1921.
- Pyramid Packing Co. Suit filed October 13, 1921.



Alexander Propper & Co. Proof of claim filed in bankruptcy court April, 1921.

Sam Pass. Suit filed April 21, 1922.

Russel Wheel & Foundry Co. Attachment proceedings June 9, 1920. Philadelphia. September 1, 1921, suit filed in Detroit.

Rollins Chemical Co. Counterclaim filed in Court of Claims.

J. Richman & Co. Suit filed May 12, 1921.

Stoops Packing Co. Suit filed August 10, 1921.

Straits Packing Co. Suit filed October, 1921.

Try-State Construction Co. February 15, 1922, suit filed.

Town Creek Lumber Co. Suit filed August 24, 1921.

United States Transport Co. Suit started September 20, 1921. (Five separate suits.)

Universal Sales Co. Suit filed April 25, 1922.

United Metals Selling Co. June 8, 1922, suit filed.

Valdez Packing Co. Suit filed October 6, 1921.

In addition to the above the following criminal actions have been instituted since March 4, 1921:

United States v. Elmer S. Moore and C. E. Black. Indictment returned September 29, 1922.

United States v. Ernest C. Morse, Everly M. Davis, and Alexander W. Phillips. Indictment returned August 7, 1922.

Charles A. Ritzman. Indicted September, 1919, tried June 14, 1922, and convicted. Clarence Hogue, Lucian M. Simpson, and Elmer J. Comer. Indicted November, 1918. To be tried January 29, 1923.

Alfred J. Peters. Indicted February 13, 1922.

J. N. Jagers. Indicted February 13, 1922.

Paul B. Aepli. Indicted February 13, 1922.

Alfred J. Peters. Indicted February 13, 1922.

Vernon Peters. Indicted February 13, 1922.

Joseph N. Jagers, Edward C. Heid, and Joseph Heid. Indicted February 13, 1922.

Alfred K. Peters, J. N. Jagers, and Paul B. Aepli. Indicted October 27, 1919, and tried January 3, 1922.

Alfred J. Peters and Edward C. Heid. Indictment returned February 13, 1922.

Alfred J. Peters and Paul B. Aepli. Indictment returned February 13, 1922.

Alfred J. Peters and Ellis H. Pugh. Indictment returned February 13, 1922.

Charles W. Morse and Edwin A. Morse. Indictment returned February 22, 1922.

Benjamin W. Morse. Indictment returned February 22, 1922.

Harry F. Morse. Indictment returned February 22, 1922.

George M. Burditt. Indictment returned February 22, 1922.

Nehiman H. Campbell. Indictment returned February 22, 1922.

Rupet M. Much. Indictment returned February 22, 1922.

Phillip Reinhardt. Indictment returned February 22, 1922.

Leonar D. Christy. Indictment returned February 22, 1922.

William W. Scott. Indictment returned February 22, 1922.

Richard O. White. Indictment returned February 22, 1922.

Colin H. Livingstone. Indictment returned February 22, 1922.

Charles W. Morse. Indictment returned April 26, 1922.

Stewart A. Gibboney. Indictment returned April 26, 1922.

Martin J. Gillen. Indictment returned April 26, 1922.

Edwin A. Morse. Indictment returned April 26, 1922.

Benjamin W. Morse. Indictment returned April 26, 1922.

Erwin A. Morse. Indictment returned April 26, 1922.

H. F. Morse. Indictment returned April 26, 1922.

J. L. Phillips. Indictment returned July 18, 1922.

Chas. Phillips, jr. Indictment returned July 18, 1922.

Frank T. Sullivan. Indictment returned July 18, 1922.

Chas. S. Shotwell. Indictment returned July 18, 1922.

Ernest C. Morse. Indictment returned July 18, 1922.

Roland Perry. Indictment returned July 18, 1922.

Gus Eitzen. Indictment returned July 18, 1922.

Mitchell A. Touart, jr. Indictment returned July 18, 1922.

John Stephen. Indictment returned July 18, 1922.

E. B. Wood. 1922, indictment returned in eastern district of Virginia.

Ben Sugar. filed

Dan Gre. filed

Joe Gre. led

Ike Gre. led

Max A. Elser, major, Quartermaster Corps. Indictment filed July 14, 1922.

E. D. Hirsch. Indictment filed July 14, 1922.

Allen Harris. Indictment filed July 14, 1922.

Capt. Frank Tingley. Indictment filed July 14, 1922.

(Whereupon, at 12.15 o'clock p. m., the committee recessed until 1.30 o'clock p. m. this day.)

AFTERNOON SESSION.

**TESTIMONY OF HON. ROGER SHALE—Resumed.**

The committee met, pursuant to the taking of a recess, at 1.45 o'clock p. m., Hon. Andrew J. Volstead (chairman) presiding.

Mr. HOWLAND. What was the last matter?

Mr. SHALE. I can resume where I left off. To summarize, there were instituted a series of six suits; on June 30, 1921, a civil suit was instituted at New York City; on August 8, 1921, a criminal suit was instituted at New York City.

Mr. HERSEY. Against whom?

Mr. SHALE. Against manufacturers of Portland cement in that section of the United States.

Mr. HERSEY. How many?

Mr. SHALE. Nineteen corporations and 44 individuals.

On October 24, 1921, a civil suit was filed in Chicago, against the Mid-West Cement Credit and Statistical Bureau.

On October 25, 1921, a civil suit was filed in Kansas City, Mo. against Hiram L. Norcross, and others, who were operating the so-called Norcross Bureau, to which a number of cement manufacturing companies belonged.

On January 10, 1922, a civil suit was filed at Denver, Colo., against the Cement Securities Co. and others.

On March 9, 1922, an indictment was returned at Chicago against the Lehigh Portland Cement Co. and some thirty-odd corporate defendants, and 30 to 40 individual defendants.

That makes a series of six suits, two criminal and four civil, which have been instituted against the cement manufacturing companies.

Mr. HOWLAND. Now, just one question, and this is with reference to this subdivision No. 4.

Mr. HERSEY. Pardon me a minute.

Mr. HOWLAND. Specification No. 8.

Mr. HERSEY. Pardon me for a moment. You testified to certain suits?

Mr. SHALE. Yes.

Mr. HERSEY. Against a great many defendants in many parts of the country. I want to know what has been the outcome of those suits.

Mr. SHALE. The criminal suit in New York was tried beginning April 4, 1922. The trial lasted two months. The jury was out for 35 hours and reported a disagreement. Our best information is that there were 10 to 2 in favor of convicting some of the defendants and 6 to 5 as to all of the defendants.

Mr. FOSTER. Hasn't that been covered before in this hearing?

Mr. SHALE. That was mentioned by Colonel Hayward yesterday.

The civil suit in New York is set for trial the second week in this coming February. That suit will be tried on the record made in the criminal case tried last spring.

The Chicago case, or the Chicago cases, and the Kansas City case are awaiting the outcome of the New York cases, the same principles of law being involved in those suits.

The suit pending at Denver is different from those heretofore mentioned. The Cement Securities Co. is organized along the lines of a holding company. That case is now pending on a motion to dismiss.

Mr. YATES. That is a criminal case?

Mr. SHALE. That is a civil case.

Mr. HERSEY. Have you covered all of them now?

Mr. SHALE. Yes, sir.

Mr. HOWLAND. Were any of these cases started since the 11th day of September of this year?

Mr. SHALE. The 11th day of September of this year?

Mr. HOWLAND. Yes.

Mr. SHALE. No, sir.

Mr. HOWLAND. They were all started before?

Mr. SHALE. Yes, sir.

Mr. HOWLAND. Now, specification No. 8, the Cement Trust, the Portland cement companies. These companies that you have been talking about are all Portland cement companies, are they not?

Mr. SHALE. Correct.

Mr. HOWLAND. This allegation in subdivision No. 4, specification 8, says, that notwithstanding the persistent public and other protests of the committee of the New York Legislature, and its counsel, the said Harry M. Daugherty, has refused and still refuses to institute any proceedings to punish the individuals and corporations guilty of these violations.

Is there any truth in that statement?

Mr. SHALE. I should say not. I think even the defendants will admit that they have been prosecuted.

(Whereupon the witness was excused.)

### TESTIMONY OF HON. ABRAM F. MYERS, SPECIAL ASSISTANT TO THE ATTORNEY GENERAL.

(Whereupon Hon. Abram F. Myers, special assistant to the Attorney General of the United States, was called as a witness, who, being first duly sworn, upon examination testified as follows:)

Mr. HOWLAND. I am calling Mr. Myers with reference to specification No. 8, subdivision No. 2, known as the New York, New Haven & Hartford case.

The CHAIRMAN. What page is that?

Mr. HOWLAND. Page 42 of the committee print and page 55 of the hearings. It will be found on page 42 or 43 of the committee print and page 55 of the hearings.

Mr. HERSEY. What subdivision?

Mr. HOWLAND. Subdivision No. 2, the New York, New Haven & Hartford, where it is claimed that the Attorney General is consenting to give away all of the rights of the New York, New Haven & Hartford. Did you give your name?

Mr. MYERS. I did.

Mr. HOWLAND. Will you please state your occupation?

Mr. MYERS. I am at present a special assistant to the Attorney General, having held that position since March, 1920.

Mr. HOWLAND. Has this matter been under your charge?

Mr. MYERS. It has.

Mr. HOWLAND. Very briefly, tell the committee what the situation is with reference to that matter.

Mr. MYERS. In October, 1914, a decree was entered in the United States District Court at New York against the New York, New Haven & Hartford Railroad Co. by consent. The petition was one under the Sherman Antitrust Act. The effect of that decree was to place in the hands of trustees appointed by the court the securities of the principal subsidiaries of the New Haven company, with directions to those trustees to administer the property until the securities could be sold to persons not interested in the New Haven.

The principal subsidiaries were the Connecticut company, which operated the trolleys in the State of Connecticut; the Rhode Island company, which operated the trolleys in Rhode Island; and 52 per cent of the stock of the Boston & Maine Railroad.

Due to adverse market conditions, none of those stocks were disposed of at the time Attorney General Daugherty came into office with the exception that the Rhode Island company, having become bankrupt, its properties were sold at a trustees' sale, and those properties were eliminated from the case.

Early in Mr. Daugherty's administration, business interests and public officials in New England requested him to consider the matter of that decree. They represented to the Department of Justice that the decree had been entered under duress; they represented that the properties involved were in no sense competitive; they represented that the New Haven Railroad Co. was then in a delicate financial condition; that a foreign loan of some \$30,000,000 was to fall due on the 1st of April, 1922; that it would need all of the collateral that it could get hold of to refinance that loan.

The Attorney General dispatched a representative to New England to make a preliminary investigation. The representative reported back to him with regard to the situation, and the Attorney General announced publicly that he would go to New England and hold hearings to ascertain himself what were the facts. Notice of this proposed trip was published in all of the New England papers. Two public hearings were held, one at Hartford and one at Boston. There was nothing ex parte or secret about them. The public was invited in; everybody having views or information to impart were invited to be present and give them.

There were 17 speakers at Hartford and perhaps as many at Boston. Some favored the entire vacation of the decree, others modifications. Some were altogether opposed to any amendment of the decree. Nothing was done in the matter until April, 1922. Sometime during that month, the New Haven Railroad filed in the district court in New York a petition to modify that decree to the extent that the New Haven company would be granted proportionate representation on the board of directors of the Boston & Maine. That petition recited that during the trusteeship, due to a reorganization of the Boston & Maine, the 52 per cent control, which the New Haven had exercised over the Boston & Maine, had been reduced to a 28 per cent minority.

The hearings on that petition were in open court. It was a judicial proceeding. The court invited and heard many persons who were not parties to the record. Among those who spoke were the attorney general of Massachusetts, counsel for the stockholders protective committee of the Boston & Maine, and many others.

The Attorney General was present at that hearing. His presence certainly was justified there by reason of the fact, first, of his knowledge of the details of the case, as a result of his visit to New England, and, secondly, because of the large financial interest which the Government has in both the New Haven Railroad and the Boston & Maine.

Mr. YATES. What was that, \$83,000,000 and \$46,000,000?

Mr. MYERS. That is right. The Government holds \$83,000,000 in the New Haven and \$46,000,000 of the securities of the Boston & Maine.

After all counsel had been heard, the Attorney General rose and said that his mind had been open to that point, but that he had decided that the petition of the New Haven was fair and justified, and he thereupon consented to it.

The court thereupon delivered an opinion, in which it sustained the petition, and entered an order instructing the trustees to vote for five directors of the Boston & Maine, to be nominated by the New Haven Railroad. That would give the New Haven five directors out of a total of 18.

Mr. YATES. What percentage?

Mr. MYERS. Five out of 18. That would be proportionately less than the 28 per cent of stock which the New Haven then had in the Boston & Maine.

Mr. YATES. It had been reduced to 28 per cent?

Mr. MYERS. It had; yes, sir.

The trustees at the ensuing annual meeting of stockholders of the Boston & Maine carried out their instructions. In the meantime, however, the management of the road had organized the majority holders, and as a result the trustees were out-voted and none of the nominees of the New Haven were elected, and the situation to-day is precisely the same as it was before this proceeding took place.

Mr. HERSEY. The opinion of that judge is available?

Mr. MYERS. It is.

Mr. HERSEY. Mr. Chairman, I would like to have that put in the record.

Mr. MYERS. It is in my memorandum.

The CHAIRMAN. How long is it?

Mr. HOWLAND. We will file it. You dig it up, Mr. Myers, and we will file it.

Now, are there any questions with regard to New Haven?

#### RE SPECIFICATION 14, SUBDIVISION 9.

Mr. HOWLAND. I want to turn your attention now to what is called the H. Miller count, which is No. 9, specification No. 14, subdivision No. 9, in the war-fraud matters.

Mr. HERSEY. What page?

Mr. HOWLAND. That is on page 74 of the committee print.



The CHAIRMAN. I think that we all have the committee print.

Mr. HOWLAND. It is on page 74 of the serial print.

Has that specification been called to your attention, wherein it is alleged that the Attorney General failed and neglected to prosecute H. Miller?

Mr. MYERS. It has.

Mr. HOWLAND. Now, state very briefly the exact situation and the conditions of that matter.

Mr. YATES. Is that subdivision No. 9?

Mr. HOWLAND. That is subdivision No. 9, of specification No. 14. It is on page 74 of the committee print.

Mr. YATES. That is on page 86 of the hearings?

Mr. HOWLAND. Eighty-six of the hearings.

Mr. YATES. Eighty-six and eighty-seven of the hearings.

Mr. HOWLAND. Now, go right ahead in your own way on the Miller matter.

Mr. MYERS. In December, 1921, being attached to the office of the Assistant to the Attorney General, I was requested by him to assist in the supervision of certain members of his office engaged in the investigation of the so-called war frauds.

I attempted to familiarize myself with the situation, first, by ascertaining from each member the cases on which he was particularly engaged.

The H. Miller cases were being investigated by a special agent, W. O. Watts.

On December 3, 1921, after Major Watts had been employed for almost five months, he rendered what is entitled a preliminary report on the illegal sale of 516,004 yards of duck. The report did not even purport to be a final one, and, in fact, expressly recited that it was subject to further investigation and further report. That matter was continually under investigation, as I had supposed, by Major Watts until on March 28, when, in response to a request for a written statement of the status of the cases in his charge—the request was not peculiar to him, but was a general one to all engaged in that work.

Mr. HERSEY. Last year?

Mr. MYERS. No; this year, this March, 1922. He replied that the matter was still under investigation, and that it would be necessary for him to make an analysis of a report which had been made by a Colonel Hunt, of the Inspector General's office, in which Colonel Hunt had found that none of the charges in respect to this transaction were irregular or illegal.

Major Watts had characterized that report as a prearranged white-washing. I know nothing about the merits of the report or the accuracy of his characterization.

Following that, as is now perhaps well known to everybody, Major Watts was dismissed from the department.

In a memorandum to the Attorney General dated April 17, 1922, which, by the way, is printed in the Congressional Record of April 18, page 6553, Major Watts says:

I informed Mr. Johnson that copies of my proofs were brought with me to the Department of Justice upon my employment as a special agent, July 6, 1921; that I had rendered a preliminary report on December 3, 1921, which was sustained by the attorney of the Department of Justice and that the case had been referred to another attorney on March 17, 1922, it was still incomplete as to all evidence and awaiting the comple-

tion of an analysis by me of the Inspector General's report and some evidence to be obtained.

Before the investigation could be completed, the war activities section was organized. Such papers and documents as the department had relating to this matter were transmitted to that section. My impression is that they were somewhat in a state of confusion; but, in any event, the matter now is being prosecuted under the direction of Mr. Reavis, of that section.

Mr. HOWLAND. I think that is all.

Mr. JEFFERIS. Just one question.

Mr. MYERS. Yes, sir.

Mr. JEFFERIS. How long has the Government had this \$83,000,000 of bonds in this railroad?

Mr. MYERS. Why, I would assume that that represents the refunding of the general indebtedness to the Government which accrued during the period of Federal control, and loans thereafter, which refunding operations were provided for in the transportation act of 1920. I might say that I think about \$3,000,000 of the total loan to the New Haven represents a new loan granted by the Treasury Department and the Interstate Commerce Commission within the last year. That loan was made to the New Haven to assist it in meeting the foreign loan which fell due on April 1 last.

Mr. HOWLAND. That is all.

### TESTIMONY OF COL. GUY D. GOFF—Resumed.

#### IN RE SPECIFICATION NO. 8, SUBDIVISION 3.

I want to call your attention now to specification No. 8, subdivision No. 3, which is known as the General Electric charge.

Mr. HERSEY. What page?

Mr. HOWLAND. On page 44 of the committee print and 66 of the hearing.

(Whereupon the witness was excused.)

Whereupon Guy D. Goff resumed the stand, and having been previously duly sworn, testified as follows:

Mr. GOFF. Mr. Chairman, I was sworn yesterday.

The CHAIRMAN. Yes; you have been sworn.

Mr. GOFF. Now, I can state in very general terms that after the Lockwood committee certified to the Department of Justice certain delinquencies on the part of the General Electric Co., I took the matter up personally with the Attorney General, Mr. Daugherty.

He determined that it was better to appoint an entirely new investigator and not have the matter investigated by the antitrust division of the United States attorney's office in New York.

Pursuant to that conclusion, Mr. Finch, the brother of the pardon attorney, a gentleman who had been connected with the Department of Justice under Mr. Wickersham, and then assigned as an investigator of the so-called white-slave cases, was selected, and he was directed by myself, acting under the orders of the Attorney General, to go to New York, obtain possession of all of the Lockwood Committee reports, and make a study and then make such investigations as he thought necessary to mine this question: "Was the General Electric Co. in contempt of the suit instituted and the decree entered?"

This investigation was very thorough, not only including all of the domestic but such of the foreign business of the General Electric Co. as it was possible to discover. At the end of a most complete investigation a report was made by Mr. Finch. That report was considered by myself, taken up with the Attorney General in the form of a digestive memoranda, and the Attorney General directed that it be referred to other officers of the department, principally Mr. James A. Fowler, and Mr. Fowler went over this investigational report and also submitted a report to the Attorney General based upon the conclusions Mr. Finch had reached.

The matter has so rested for the present because there has been a difference of opinion growing out of certain patent law questions which are very intimately involved in these questions.

The reports of Mr. Fowler and Mr. Finch have only been completed within the past 60 days. Mr. Finch's report, I believe, possibly 60 days ago, and Mr. Fowler's report, based upon Mr. Finch's report, within the past 30 days.

As to what action the Department of Justice may in the end take in this matter, I am not in a position to say.

Mr. HERSEY. As I understand, the Department of Justice, Colonel, has taken the position that it always must be governed by the opinion of Samuel Untermyer.

Mr. GOFF. No, sir; the Department of Justice has not only declined to be so bound, but has by its conduct, as well as by word of mouth, informed Mr. Untermyer that he is not running the Department of Justice.

Mr. HERSEY. Oh, yes.

#### IN RE SPECIFICATION NO. 9.

Mr. HOWLAND. Mr. Goff, may I ask your attention to specification No. 9, on page 46 of the hearings?

Mr. CLASSON. What is that?

Mr. HOWLAND. I say, specification No. 9, in the committee proof, page 46, and in the hearings——

Mr. CLASSON. Well, we do not care about that. We have the committee print.

Mr. GOFF. It is on page 47.

Mr. HOWLAND. Yes, in the committee print, page 47. That refers to the Virginia Ship Building Corporation, and the charge attempted to be made is that a certain man by the name of Morse was indicted because of some previous relation which he sustained with the Attorney General of the United States.

What is the situation in reference to that so-called Morse indictment, Mr. Goff, as you are informed on that subject?

Mr. GOFF. The so-called Morse indictment grew out of certain transactions which Mr. Morse had with the United States Shipping Board and the United States Shipping Board Emergency Fleet Corporation. These transactions were reported to the Department of Justice by the legal department of the United States Shipping Board for such action as the Department of Justice might conclude was warranted in the premises.

In due course the papers were sent to that district attorney whose district had jurisdiction. This case was sent to the United States attorney for the District of Columbia.

I was present on two, several occasions, when the Attorney General stated to the general counsel of the United States Shipping Board that the Department of Justice did not care to have anything to do with this prosecution, and that inasmuch as the United States Shipping Board had a very large and experienced staff of lawyers, that he, the Attorney General, would prefer that all matters connected with the Virginia Ship Building Corporation, one of Mr. Morse's corporations, and with Mr. Morse, his son, and others be conducted solely by the legal staff of the United States Shipping Board in conjunction with Maj. Peyton Gordon, the United States district attorney for the District of Columbia.

That was so understood, and to my knowledge, so far as my knowledge goes, the Attorney General gave no direction to these attorneys as to what they should do.

Mr. Morse, at one time, during the absence of the Attorney General in the West on official business went abroad, and the Department of Justice was requested to use its good offices with the State Department to have Mr. Morse intercepted and asked to return to this country.

I, personally, took the matter up with the State Department in conjunction with Mr. Schlessinger, the general counsel of the United States Shipping Board.

The Attorney General, himself, personally knew nothing of these proceedings, and in fact was not in the District of Columbia at the time they occurred.

As a result the French authorities intercepted Mr. Morse when the *Paris* landed at Havre, and he was returned to the United States as an undesirable citizen to the French Government.

Shortly thereafter Mr. Fletcher Dobbins, an attorney of Chicago, Ill., and a member of the legal staff of the United States Shipping Board, who had sole charge of the Morse matter, applied to the Department of Justice for authority to appear before the United States grand jury. Such authority could, of course, be given him only by appointing him a special assistant to the Attorney General of the United States, charging him with the responsibility of prosecuting this case.

He was appointed such special assistant Attorney General of the United States and was appointed, without pay, because he was already on the salary list of the United States Shipping Board. I think as to that, although I may be mistaken, I signed his appointment as acting as Attorney General, and he went to the office of the United States District Attorney here and presented with the United States District Attorney, the issues involved in the so-called Morse indictment to the grand jury.

I could say, if an opinion be permissible, that I do not think the Attorney General of the United States either suggested or indicated, controlled directly or indirectly, or otherwise, the presentation of this case, or the names of the people who should be presented to the grand jury for indictment.

Mr. FOSTER. And, the indictment of the same nature, of the matter

t of an investigation  
and Walsh Committee?

Mr. GOFF. Yes, sir.

Mr. FOSTER. Which investigated Morse's different companies through a period of two years.

Mr. GOFF. They furnished the basis of the investigation.

Mr. FOSTER. Report of which is filed in the House?

Mr. GOFF. Yes, sir.

IN RE SPECIFICATION 14, SUBDIVISION NO. 2.

Mr. HOWLAND. Now, Mr. Goff, may I call your attention to the so-called United States Harness Co., which is subdivision No. 2, of specification No. 14, of the committee print?

Mr. HERSEY. That is subdivision No. 2?

Mr. HOWLAND. Yes; page 64 of the committee print.

Mr. GOFF. When the present Attorney General came into office on the 4th of March, 1921, there was in the Department of Justice several of the so-called war-contract cases, the investigation of which had been started by his predecessor, Mr. Mitchell Palmer.

One of these cases was the United States Harness Co. case. That case had been under investigation in the former administration by Mr. Charles Brewer. The investigation grew out of the hearings before the Graham committee of the House. Mr. Palmer, as I understand it, had been requested by the members of the committee to place the further conduct of this matter in the hands of Mr. Brewer. Mr. Brewer, when I first knew of this case, which I would say was about the 1st of April, 1921, had been investigating the matter for several months.

The case involved this legal proposition, whether a contract entered into by members of the Military Establishment with a corporation of which they were stockholders was a contract against public policy. The matter was continued in its investigation until about the 1st of June, 1921, when it was determined that the contract should be declared null and void as being against public policy and as being based on a very baneful and illegal consideration.

An order voiding this contract was prepared and presented to the President of the United States, pursuant to the provisions of section 112 of the Criminal Code of the United States, which provides in effect, that no contract shall be entered into by any member of Congress, or by any official of the Government, or any department of the Government, while, as a member of a private corporation is also holding an official position, and the very last sentence of this provision of the penal code provides: "Any such contract, or agreement, may at the option of the President, be declared void."

When these matters were presented through the Secretary of War to the President, he declared the contracts void, June 14, 1921. And, on the same day, the United States Harness Co., whose offices were at Ralston, W. Va., very near Charles Town, were duly notified that the contract had been voided.

Very shortly thereafter, within a week, the Secretary of War sent 60 soldiers and several trucks to Charles Town and Ralston to take repossession of all harnesses, saddles and other items in the possession of the United States Harness Co., and bring it to Washington.

During the noon hour, the United States Harness Co. closed their doors, and it developed that they had retained local counsel under the



law of West Virginia, and were having a bill in equity drawn to obtain an injunction against the officers of the Government, in the State courts of West Virginia, enjoining them from removing this material and taking possession of it.

When the factory was opened after the noon hour the officer in charge was served with this injunction, and he immediately telephoned the Department of Justice. I then talked to the officer in charge, placed there by the Secretary of War. I directed him to obey the injunction, and stated that we would take the matter up in the State courts immediately.

I then directed that the case be removed from the State court to the United States court, and it was duly removed. Thereafter certain motions were made and argued by the United States attorney to dismiss the proceedings upon the ground that it was an action against the United States of America. The judge of the United States court decided the motion adversely to the United States, but gave the United States an opportunity to answer fully, setting forth such facts in the answer as the court indicated did not appear upon the motion papers.

Shortly after that, and within the 30 days' time given, an answer, as complete as the record permitted, was filed. Then the case was set for argument at Martinsburg in the United States court in September, 1921. I personally went to Martinsburg and tried this case for the United States Government, tried it along the lines suggested. There was raised an additional question that the whole issue was moot, because in the meantime and under the cloak of this injunction the United States Harness Co. had moved out of the State of West Virginia and into the State of Maryland, all of the subject matter of this suit. The Government, of course, responded that such action was contempt of court, and that question became one of the additional issues.

I regret to say that the court has not decided this matter, although the matter has been under advisement since September, 1921. There were certain legal issues of great importance awaiting the decision of the United States court, and for that reason the matter was held in abeyance in the Department of Justice. We expected a decision almost monthly, and when the War Fraud Section was created the case falling within that classification was sent to that section and placed in the hands of Colonel Anderson, in charge of ordnance affairs, and his testimony covered that matter this morning.

#### IN RE SPECIFICATION NO. 14, SUBDIVISION NO. 6.

Mr. HOWLAND. Now, Mr. Goff, may I ask you to turn your attention to subdivision No. 6 of specification No. 14, on page 70 of the committee print, which is known as the Macoy Co.'s specification, where it is claimed that Daugherty had neglected and refused to prosecute the Macoy Co. for an accounting?

Mr. GOFF. Yes; I recall that.

Mr. HOWLAND. Go right ahead and state the situation.

Mr. GOFF. That matter, gentlemen, grew out of the use by America during the war of all the telegraph lines controlled by the Macoy Co. You will recall that in " " the Government took over the

telephones and telegraph lines of the United States and operated them.

Mr. GOODYKOONTZ.. The Postmaster General did that.

Mr. GOFF. Yes; he was authorized under act of Congress to do it.

Under the operation of these companies the question arose, How should they be compensated?

Should they be compensated according to the value of the use requisitioned when the lines were taken over, or should they be compensated according to the net cost of the operation? The Macoy Co. had not turned over to the United States the money which it had received, as the United States alleged, as agent during the time these lines were being operated by the Postmaster General. That sum of money amounted to approximately \$2,000,000 throughout that entire period. The Western Union, as the evidence disclosed, had been paid a sum in addition to the sum which it had secured during the period of operation. The Macoy Co. had presented to the Postmaster General a statement showing the annual value of its use for the years preceding the war, and for the years following the war. It claimed that the value of the use, as determined by its fair earning capacity, was a value below, in fact, the amount which it had received. It stated, however, that it was willing to settle the matter by retaining the amount it had received from operations while the company was in the hands of the Postmaster General. The Postmaster General was unwilling to settle on the basis of fair compensation as measured by the value of the use, but said that it should be determined according to the net cost of operation. Therein was the dispute.

There was a suit started by the former Postmaster General, agreeably to that theory. The present Attorney General had a long hearing upon the matter. The attorneys for all of the interests were present, the attorney who had been the Solicitor for the Post Office Department under the former Postmaster General, Judge Lamar, who had also prepared this suit, was present; the Macoy Co. was represented by many distinguished lawyers, and after the case was thoroughly argued and briefed, and considered by the Attorney General, he reached the conclusion—and I was with him at the time that this was done, and I agreed with him at the time that it was done—that the fair measure of compensation should be arrived at by finding the value of the use of this property at the time it was taken, and not by the value of what it might cost to operate this company by people other than those who had charge of it.

Mr. HOWLAND. That was all there was of the case. As the result of that, the suit was not prosecuted.

Mr. GOODYKOONTZ. What was the result?

Mr. GOFF. As the result of that, the suit was not prosecuted and the bill was dismissed.

#### IN RE SPECIFICATION 14, SUBDIVISION NO. 8.

Mr. HOWLAND. Mr. Goff, I call your attention to one more. That is the American Electro Products matter, a Canadian concern, which is subdivision No. 8 of specification No. 14 on page 73 of the committee print, where it is charged that they failed to sue a Canadian concern for \$1,750,000, or something like that.

Mr. Goff. That matter came to my attention for approval of the procedure. It was a question that originated when it reached the Department of Justice in the division presided over by Judge Lovett, which is the division having charge of Court of Claims cases. The question of procedure there was this: Should the United of America go to Canada and prosecute its claims against the Canadian company in the courts of Canada, always having in view the ultimate step of its final appeal to London; or should the United States, if it could be brought about, compel the Canadian company to sue the United States in the Court of Claims at Washington, where these matters could once for all be determined and determined in one of our domestic courts rather than in a foreign court? I decided that the matter should be determined in the domestic courts here; that we should not sue in the Canadian courts, and the case is awaiting such disposition.

Mr. HERSEY. Has suit been brought?

Mr. Goff. I do not understand that it has, but I do not state that from any knowledge, as my connection with it was merely to approve or disapprove of the procedure which I have just outlined.

Mr. CLASSON. Well, Colonel, this subdivision states that this was a loan by the Government to this concern. Now, what would they have to sue the Government for if they got the money?

Mr. Goff. Well, there were certain other claims, as I understood, growing out of that.

Mr. CLASSON. I was just reading the specification.

Mr. Goff. What page is the specification on?

Mr. CLASSON. Page 72 of the committee print.

Mr. Goff. The Attorney General states—and possibly I can answer that question, Judge Classon, better by reading this portion of the answer:

In this specification it is sought to be charged that the Attorney General failed and neglected to prosecute the American Electro Products Co., a Canadian concern, and that there is due and owing to the United States, growing out of a certain contract entered into with the United States, the sum of \$1,750,000 with interest. The Attorney General begs leave to state that the company asserted and filed a large claim against the United States under the date of September 11, 1922, and filed its petition to recover such claim in the Court of Claims in the city of Washington; that on November 20 the United States filed its answer generally to such claim and set up by way of counter claim in its answer the rights of the United States Government in the matters sought to be charged.

The Canadian concern had, of course, over and above that sum of money, alleged that there was an amount due and owing to it in excess of what had been loaned.

Mr. GOODYKOONTZ. The Court of Claims, therefore, took jurisdiction of the subject matter and of the parties?

Mr. Goff. Yes, sir.

Mr. HERSEY. And that matter is pending in the Court of Claims?

Mr. Goff. Yes, sir; now.

Mr. GOODYKOONTZ. And therefore verifies your opinion, Colonel Goff, that the best place to sue these fellows was here in our own country?

Mr. Goff. Yes, sir.

Mr. HOWLAND. I think th

Mr. GOODYKOONTZ. Mr. wondering if in my absenc

nel.

s a little tardy, and I am Mr. Shale was concluded?

Mr. Goff. Yes, sir; it was concluded.

Mr. GOODYKOONTZ. What I had in mind was this: Mr. Shale seems to have been inherited by this administration from the one prior, and I have been wondering to what extent he was a party to that plan to put the window-glass case—which seemed to involve a labor union and which came to the department in 1919—in cold storage for about two years and to suggest that Mr. Shale ought to explain his theory that it would be a favor to the succeeding administration by not embarrassing it at all to take no action in the case, and to leave the matter to the determination of a succeeding administration. I want to say this gentleman was a very good legacy. He seems to have a bright mind, but his explanation is not at all clear to me.

Mr. JEFFERIS, I think he said that someone directed that—Attorney General Palmer.

Mr. Goff. He gave the facts. You can draw your own conclusions.

Mr. HOWLAND. Are there any other questions?

The CHAIRMAN. No.

### LETTER FROM ATTORNEY GENERAL TO HON. WILLIAM HAYWARD.

#### IN RE SPECIFICATION 8, SUBDIVISION NO. 1.

Mr. HOWLAND. Now, with reference to what is known as the United Gas Co. specification, which is specification No. 8, subdivision No. 1, page 39, of the committee print, I wish to offer the following letter, which is from the files of the department and is accurate in every respect:

NOVEMBER 24, 1922.

Col. WILLIAM HAYWARD,  
*United States Attorney, New York, N. Y.*

DEAR COLONEL HAYWARD: An indictment was returned in the district court of the United States of America for the southern district of New York in the case of United States of America against the United Gas Improvement Co. and others March 6, 1922.

Since the indictment was returned some complaint was made by the parties interested in bringing the matter to the attention of the Department of Justice that the indictment was defective and that a motion to direct a verdict for the defendants on the ground of a variance between the charges of the indictment and the case made by the proof might be sustained. Information is at hand indicating that former Attorneys General of the United States had grave doubts as to whether the charges covered by this indictment related to "interstate" commerce. Proof of venue and criminal acts within the statute of limitations necessary to support a conviction renders a successful prosecution extremely doubtful.

For these and other reasons an investigation has been made of the evidence and the law relating to the charges made in this indictment, and I am now of opinion that the Government would not be justified in going to trial upon it. You are, therefore requested, if such action meets with your approval, to ask the court to dismiss the indictment.

While your name as district attorney was necessarily signed to the indictment, I recall that your office had no active part in presenting it to the grand jury and that the matter was handled directly from the Department of Justice in Washington by a special assistant to the Attorney General. This fact relieves your office from any responsibility if an error was made in returning the indictment, which I now request be dismissed.

Very truly yours,

\_\_\_\_\_  
*Attorney General.*

That is signed by Mr. Daugherty, Attorney General.

Mr. GRAHAM. Was there an investigation, you say, according to that letter, made?

Mr. HOWLAND. There was an investigation and indictment returned on insufficient evidence, the Attorney General ultimately held.

Mr. GRAHAM. There was an independent investigation made by the Attorney General?

Mr. HOWLAND. Yes, I think so.

Mr. GRAHAM. By whom was that made?

Mr. HOWLAND. I do not know.

Will you swear Mr. Seymour?

**STATEMENT OF HON. A. T. SEYMOUR, ASSISTANT TO THE  
ATTORNEY GENERAL.**

(The witness was duly sworn by the chairman.)

Mr. HOWLAND. Will you give your full name, Mr. Seymour, and your position?

Mr. SEYMOUR. A. T. Seymour, assistant to the Attorney General.

Mr. HOWLAND. Has the matter of the United Gas Improvement Co. been on your desk or before you for your attention?

Mr. SEYMOUR. Yes, I have had all of the papers and a very voluminous report by Harry F. West, a lawyer of Ohio, whom I know, who was instructed to make a thorough investigation of all the facts in that case. I have examined that record for the purpose of determining two things:

First, whether the indictment should be prosecuted;

Second, whether the proceedings in equity now pending should be pursued further.

I came to the conclusion that the indictment should be dismissed and so recommended to the Attorney General.

I have under consideration at this time, with special Assistant James A. Fowler, the question as to whether there is any possible present violation of the antitrust laws such as would justify us in asking for any decree in equity. I have not fully exhausted the possibilities of that question.

Mr. GRAHAM. May I ask, Mr. Seymour, was this matter a new one brought to the attention of this Attorney General, or had it been pending in prior administrations?

Mr. SEYMOUR. It had been pending in a prior administration and the documents on file show that a man by the name of Nomand was interested in securing action by the Federal Government against these defendants. Not securing evidence under the administration of Attorney General Gregory, he made very serious charges against both Attorney General Gregory and the assistants who had had charge of the matter. He also made charges against the Assistant Attorney General under Mr. Palmer.

Now I do not wish to put in the record the facts relating to the personal character and reputation and history of Mr. Nomand, but they have had great influence upon my mind in investigating this matter.

Mr. HOWLAND. Is that all?

Mr. SEYMOUR. That is all I have to say.

Mr. GRAHAM. Who made the request of this administration to take up this matter, after two administrations had passed it over without action?

Mr. SEYMOUR. Mr. Nomand and Mr. Keller.



Mr. GRAHAM. That is, you mean Congressman Keller?

Mr. SEYMOUR. Congressman Keller, yes.

Mr. HOWLAND. We will now call your attention, as briefly as may be, to specification——

Mr. GRAHAM (interposing). Just one question more. I suppose for that reason that you are considering one branch of the case, would it or would it not be permissible for you to produce the report made and investigation made by Mr. West?

Mr. SEYMOUR. I will produce that report.

Mr. GRAHAM. I would like to have that go into the record.

The CHAIRMAN. How long is it?

Mr. SEYMOUR. Well, it is 150 pages.

Mr. HERSEY. I don't think we should encumber the record with that.

Mr. GRAHAM. I think that as this evidently was the origin of this whole proceeding, the source from which this indictment for impeachment of the Attorney General arose, the facts relating to it ought to be disclosed to this committee and Congress and the public.

The CHAIRMAN. If you will furnish us a copy, we will consider it.

Mr. GRAHAM. Mr. Keller showed when he was before this committee, in answering some questions put by some of my colleagues and myself, that he had no knowledge about any of these other specifications that were in there; had no interest, apparently, in them, but they were made at the suggestion of other people who came in after he had made his charges, and as this was the origin of the accusation against the Attorney General, I think it would be well to have that report spread on the record.

Mr. JEFFERIS. Where does this man, Nomand, live?

Mr. SEYMOUR. In New York City.

The CHAIRMAN. Have you a copy with you, so you can give us a copy of that report?

Mr. SEYMOUR. I can give you the original. That is the only one I have seen.

The CHAIRMAN. Of course you would want to have that go back to the department.

Mr. GRAHAM. Could you furnish us with a copy?

Mr. SEYMOUR. Yes.

Mr. HOWLAND. I think all purposes might be served if it was not made a part of the record but was held as a document, sort of an exhibit, and not printed in the record. Wouldn't that accomplish the purpose?

Mr. GRAHAM. I think so; just so the committee has access to it if they wish to see the motive that prompted this prosecution.

Mr. HOWLAND. I will call the committee's attention now to specification No. 7, which is known as the Chicago injunction matter, on page 38 of the committee print. It starts—I was calling your attention to the page of our answer; it should be 35.

I will call Mr. Esterline. Will you be sworn in?

**TESTIMONY OF MR. BLACKBURN ESTERLINE, ASSISTANT TO THE SOLICITOR GENERAL, DEPARTMENT OF JUSTICE.**

(The witness was duly sworn by the chairman.)

Mr. HOWLAND. Give us your full name and your business.

Mr. ESTERLINE. Blackburn Esterline, assistant to the Solicitor General, Department of Justice.

Mr. HOWLAND. How long have you been with the Department of Justice?

Mr. ESTERLINE. Since March 1, 1911; not, however, in that capacity all of the time, but as special assistant to the Attorney General until last June, since which time I have been assistant to the Solicitor General.

Mr. HOWLAND. Has your attention been called to this specification No. 7, known as the Chicago injunction matter?

Mr. ESTERLINE. Yes, sir; it has.

Mr. HOWLAND. What did you have to do with that matter?

Mr. ESTERLINE. I was associated with the Attorney General and his staff in the Department of Justice in the preparation of this bill in equity styled, "In Equity, No. 2943, United States District Court, Northern District of Illinois, Eastern Division, United States of America, Complainant, v. Railway Employees Department of the American Federation of Labor and Others."

Mr. HOWLAND. Now, possibly, Mr. Chairman, these documents which we wish to render available to the committee might be filed with the committee, but not spread upon the record and attached perhaps as exhibits, not reprinted or carried out in an extensive way.

Mr. YATES. What do you mean, the bill and orders?

Mr. HOWLAND. I want the committee to have the bill in equity. I want them to have the answers, the motions, the decree of the court and all pleadings, the record in this case which raises the question of law.

Mr. YATES. The temporary restraining order.

The CHAIRMAN. You have plenty of copies of those?

Mr. HOWLAND. Yes, sir.

Mr. GOODYKOONTZ. Counsel will recall that Mr. Stevenson agreed to produce the same documents, and we do not want a duplication.

Mr. HOWLAND. Yes; we will furnish a set with each one but I do not want them all spread in the record.

Now, Mr. Esterline, will you go ahead and explain to the committee the steps that were taken in this matter, as briefly as may be?

Mr. ESTERLINE. The bill in equity is now in printed form and names as defendants the railway employees department of the American Federation of Labor with its headquarters and principal place of business at 4750 Broadway, Chicago; Bert M. Jewell, president; J. E. McGrath, vice president; and John Scott, secretary and treasurer, all, of course, in the northern district of Illinois; the International Brotherhood of Blacksmiths, Drop Forgers, and Helpers, and James W. Kline, president thereof, of the northern district of Illinois, residing in Chicago, 14,000 members; International Alliance of Amalgamated Sheet Metal Workers, and J. J. Hynes, president thereof, both of the northern district of Illinois, and in Chicago, 18,500 members; International Brotherhood of Boilermakers, Iron Shipbuilders, and Helpers, and J. A. Franklin, presi-

dent, all of Kansas City, Mo.—33,500 members; Brotherhood of Railway Carmen of America, Kansas City, and Martin F. Ryan, president, of that city—224,400 members; International Association of Machinists, William H. Johnston, president, and E. C. Davidson, District of Columbia; their headquarters are located in the District of Columbia, and they have 86,000 members; and the International Brotherhood of Electrical Workers, with its headquarters in the District of Columbia, James P. Noonan, president—24,000 members. Then there were the numerous system federations, each of which was made up of members of the associations to which I have referred. The total number on strike was about 400,000 located at about 4,000 points in various parts of the country.

Passing the allegations of the bill, the committee will find, as exhibits attached thereto and made a part thereof, among other things, exhibit number three, which is an affidavit of Mr. McGuire of the Department of Justice, giving a digest of killings, assaults, derailments, dynamitings, and bridges destroyed; sabotage and depredations, coal congestions, California-Arizona desert situation, and the Roodhouse Illinois situation, which, with the other exhibits to the bill, formed the basis with the bill of the application for the temporary restraining order before Judge Wilkerson on September 1, 1922.

Mr. SEYMOUR. That is as reported to the Department of Justice.

Mr. ESTERLINE. These depredations to which I have referred, accounts of which are attached to this bill in exhibit form, were reported to the Attorney General from points in the various States of the United States where the strike was being carried on. They came in in the form of telegrams, petitions, letters, and what not, from marshals, district attorneys, officers and managers of railroad companies, and in various other ways.

The bill in equity with those exhibits was presented in open court on the 1st of September, 1922; they were read in their entirety, together with the temporary restraining order which was applied for. At the close of that hearing the temporary restraining order was issued, and service was then made by the United States marshals upon the officers of the several organizations and the president and secretary of each of the federated shops crafts systems. Each officer was served three times—as an officer, as an individual, and as representative of a class. The same was true of the officers of the main organizations.

That temporary restraining order so issued and served carried in it the notice that the hearing on the application for injunction pendente lite would proceed on September 11, 1922, at 10.30 o'clock, the statute and the equity rule providing that 10 days' notice should be given.

On the morning of September 11, 1922, we appeared in Chicago and moved for the preliminary injunction. The defendants, Jewell and Scott only, appeared with a motion to dismiss the bill for want of equity and also claiming that the suit was filed from ulterior motives and not in good faith.

Mr. YATES. Jewell and who?

Mr. ESTERLINE. And Scott. That motion was argued, and taken under advisement by the court; we then proceeded to present such

evidence as we had in the form of affidavits, exhibits, and so on as basis for the issuance of the preliminary injunction order.

I have the transcript of the stenographer's notes of the evidence and arguments to and including October 5, 1922. That transcript does not include the exhibits, but contains merely the oral arguments of the counsel and their statements in presenting the evidence, and in giving to the court a digest of the affidavits and of the exhibits. It contains the notes of the arguments and of the evidence presented on both sides.

Mr. FOSTER. It is a pile 2 or 3 feet thick there, isn't it?

Mr. ESTERLINE. Yes, sir; many volumes. At the close of the hearing——

Mr. HERSEY (interposing). Has the evidence been printed?

Mr. ESTERLINE. No. At the close of the hearing the court took the application under advisement, and on September 23, 1911, filed a full statement and opinion on the issues. As to the charge made by the defendants in their written motion to dismiss that the suit was filed from ulterior motives——

Mr. FOSTER (interposing). Is that 1911? Is that correct?

Mr. ESTERLINE. No; September 23, 1922.

Mr. SEYMOUR. What did you say about October 5? The hearing lasted until October 5?

Mr. ESTERLINE. The hearing lasted until the 23d. The first hearing lasted until the 23d of September, 1922.

Mr. HERSEY. It began September 11?

Mr. ESTERLINE. No; what confused me was the document says "11 o'clock a. m."

Mr. HERSEY. When did the hearings commence?

Mr. ESTERLINE. September 11, running from September 11 until September 23.

Mr. GOODYKOONTZ. That was the date upon which the decree was pronounced?

Mr. ESTERLINE. The date the opinion was filed by the district judge. The preliminary injunction order was not signed that day. On the charge that the suit was filed from ulterior motives and not in good faith, the opinion says—and you will find all of this in the Federal Reporter, United States v. Railway Employees, 283 Fed. Reporter, 479, and what I am just about to read is on page ——.

Mr. HERSEY (interposing). I want to get the dates correct in my mind, Mr. Esterline. I understand the taking of testimony in this case on the injunction proceedings in Chicago was commenced September 11?

Mr. ESTERLINE. Right.

Mr. HERSEY. If I have the record right that is the very day that Mr. Keller made his charges in the House on this specification.

Mr. ESTERLINE. I did not know that.

Mr. HOWLAND. Yes, sir; that is right.

Mr. ESTERLINE. The court said:

Defendants have submitted a motion to dismiss the bill. The first two grounds challenge the sufficiency of the bill as a basis for the relief sought. The third ground is that "Relief was sought in said bill and was obtained in said restraining order for ulterior and unlawful purposes upon misrepresentation and suppression of matters of fact and law, the disclosure of which was required by good faith." During the hearing, which has lasted almost two weeks, the defendants have neither offered nor sug-

gested a scintilla of proof tending to establish this averment in the motion to dismiss. The restraining order was entered after a hearing at which both the averments of the bill and the questions of law involved were fully and fairly presented.

After announcing that opinion the court postponed the entry of any preliminary injunction order until the 25th day of September, 1922. I have here a copy of that preliminary injunction order, together with a copy of the injunction writ which was issued out of the clerk's office and signed and certified by the clerk on that day. Service was made of that injunction writ upon the defendants in the same manner as the temporary restraining order was served.

Mr. GRAHAM. Are the cases still in existence?

Mr. ESTERLINE. Yes.

Mr. GRAHAM. On appeal?

Mr. SEYMOUR. They have answered.

Mr. HERSEY. I want the status of the case.

Mr. ESTERLINE. When the hearing commenced on the 11th of September, a number of the defendants had not been served in time to include them within that hearing, and the court fixed October 5 for further hearing as to those defendants who had not been served for the hearing on the 11th. On October 5 we appeared again, offered the same record of evidence, and without objection on the part of the defendants the court entered a second preliminary injunction order, naming those defendants who had not been named in the first. In other respects the orders are the same.

Mr. HERSEY. What is the status of the case at the present time?

Mr. ESTERLINE. Motion has been made to dissolve the preliminary injunction orders. That motion has been argued and submitted on briefs and arguments and is now held under consideration by the district judge?

Mr. HERSEY. By the same judge?

Mr. ESTERLINE. By the same judge.

Mr. HERSEY. Have any appeals been taken, or anything?

Mr. ESTERLINE. No, sir.

Mr. HERSEY. From the court decision no appeal has been taken?

Mr. ESTERLINE. None whatever.

Mr. HERSEY. Did appeal lie?

Mr. ESTERLINE. Appeal to the United States circuit court of appeals was a matter of right.

Mr. BIRD. Was any objection made to hearing this matter before Judge Wilkerson during the presentation?

Mr. ESTERLINE. No.

Mr. HOWLAND. Let me ask you, how did you happen to go into Judge Wilkerson's court? Did Mr. Daugherty have anything to do with it?

Mr. ESTERLINE. No.

Mr. HOWLAND. Well, state the facts in connection with that. I expect the judge would like to hear it.

Mr. ESTERLINE. This bill in equity was drafted preliminarily in the middle of July—the middle and latter part of July—by Mr. McLaughlin and myself, Mr. McLaughlin being special assistant to the Attorney General, and there it stood in abeyance. Nothing was done about filing it then.

Mr. YATES. Let me inquire, where did Mr. McLaughlin live?

Mr. ESTERLINE. He lives here in Washington.



Mr. YATES. And what is your home?

Mr. ESTERLINE. I came to the Attorney General's office from Chicago. I was born in Clark County, Ohio. I have been in the Attorney General's office since 1911. I lived in Chicago an equal length of time before that.

Mr. HOWLAND. How did you happen to file this bill in Judge Wilkerson's court? What about the jurisdiction?

Mr. ESTERLINE. The venue was laid in the northern district of Illinois because the headquarters of the Railway Employees' Department of the American Federation of Labor was in that district; the headquarters and residence of the officers of the International Brotherhood of Blacksmiths and the International Alliance of Amalgamated Sheet Metal Workers were all in the northern district of Illinois. There were more of these organizations and more of the officers of these organizations located in the northern district of Illinois than in any other district in the United States, so the venue was laid there.

Mr. BIRD. In the preparation of this bill in equity, was a new and a different relief sought, or was the application built up upon a precedent of procedure?

Mr. ESTERLINE. This bill was modeled somewhat on the bill filed in the Debs case, and the——

Mr. BIRD (interposing). What was the date of that case?

Mr. ESTERLINE. The Debs case? That was in President Cleveland's administration, 1894.

Mr. GRAHAM. Prepared by Attorney General Olney?

Mr. ESTERLINE. Yes.

Mr. HERSEY. You were asked the question why you went to Judge Wilkerson's court. Was he the only judge that had jurisdiction in the northern district of Illinois?

Mr. ESTERLINE. When the time came finally to decide whether or not we would file the bill I was in Chicago to attend the funeral of the late Levy Mayer as an honorary pallbearer, and the Attorney General called me up on the long distance telephone at the Blackstone Hotel and said: "The time has come when we have got to take some action with respect to the conditions growing out of this strike."

Mr. HERSEY. The Attorney General was in Washington?

Mr. ESTERLINE. In Washington; yes. He brought up the subject of this bill—the subject of this bill we had prepared—and asked if we could help ourselves any by filing that bill and where was the best place to file it. I answered on the telephone that there were more defendants in the northern district of Illinois among the officers and the associations than in any other district, and that it was the logical place to establish the jurisdiction. He then said: "We will have to arrange about a hearing." This was Monday or Tuesday of the week and we decided to commence the case at the end of the week. I took up the matter of a judge, and found that Judge George T. Page, who was the United States circuit judge——

Mr. HERSEY. Who did you take that question up with?

Mr. ESTERLINE. I took it up with the clerk's office and inquired around there in the Government building at various offices.

Mr. HERSEY. Did you take it up with the Attorney General?

Mr. ESTERLINE. No; he told me to take it up. He told me to arrange for the hearing.

Mr. JEFFERIS. You took it up with the Federal court there?

Mr. ESTERLINE. Yes, sir; Judge Page was in California attending the meeting of the American Bar Association; Judge Carpenter was at Huron Mountain, Mich., and was reported to be ill; Judge Wilkerson was out of the city and across Lake Michigan at a small place called Pentwater; it was said he had a cottage there. I called up Judge Wilkerson's secretary, Mrs. Ryder, having secured her name from the clerk's office in the United States district court. I asked her where Judge Wilkerson was, and she told me he was across Lake Michigan. I then asked if I could reach him by telephone and she said no, he had gone away on 10 days' leave and had asked not to be disturbed. I still insisted that I wanted to get in touch with him; she finally told me where he was. I called him up on the telephone at Pentwater, Mich., and he said: "I am going to be in Chicago on Thursday morning to hold court. I have a calendar there then." I did not tell him what the proceeding was or what was coming before the court. I told him I would see him Thursday and he assured me he would be there Thursday to hold court and dispose of cases set. When he returned on Thursday I saw him again and told him that we had a suit to bring before him, that the Attorney General was coming, and that we wanted a time fixed. He said he would set it at 10.30 to-morrow morning, Friday, and I communicated that information to the Attorney General who was already on the way, having previously communicated with him that Judge Wilkerson would be in Chicago on Thursday, and that I would be able to see him with respect to having this case set early.

Mr. HERSEY. Up to this time had the Attorney General in any way suggested to you to get Judge Wilkerson?

Mr. ESTERLINE. No, sir.

Mr. HERSEY. And in arranging the preliminary hearing before Judge Wilkerson, in anything you said or did, or any of your assistants, was anything said about him being under obligation in any way to Attorney General Daugherty?

Mr. ESTERLINE. No.

Mr. HERSEY. Nothing of the kind?

Mr. ESTERLINE. Nothing of the kind was mentioned or indicated.

Mr. HERSEY. Do you know of him being under any obligations whatever?

Mr. ESTERLINE. I certainly know of no obligations.

Mr. FOSTER. Was there any other judge more available at that time than Judge Wilkerson?

Mr. ESTERLINE. Judge Alschuler was in Chicago, but he is a circuit judge. I do not know that he was sitting in the district court or on the equity side of the court at all. I did not make any inquiry as to that. I pursued the inquiry as to Judge Page because I had been before him a number of times in other matters. I knew Judge Carpenter well. I had been before his court any number of times. Neither of them was there. I took on the next one and found he was planning to come to Chicago.

Mr. HOWLAND. As a matter of fact, Judge Carpenter was seriously ill and had been operated on?

Mr. ESTERLINE. Yes; that was the report that was made to me, hence I dropped further consideration as to him and took the next one that I could get.

Mr. MICHENER. Mr. Esterline, you say the injunction bill was prepared in the middle of July and held in abeyance. Did you have proof at that time in support of the bill?

Mr. ESTERLINE. Only part of it. It was coming in, mark you, according to the exhibit attached to this bill. Reports of these derailments and explosions and other acts of violence were coming in in increasing volume, and the Attorney General instructed me to prepare a draft of a bill in equity to see how it would work out.

The CHAIRMAN. Who prepared the order, the preliminary restraining order?

Mr. ESTERLINE. The temporary restraining order was prepared, with the first draft of the bill in equity, but before the bill was filed both the bill and the preliminary draft of the temporary restraining order were revised somewhat at the Department of Justice. I think the Attorney General, Mr. Beck, Mr. Goff, Mr. Fowler, and some others conferred in getting the papers into final shape before we finally let go.

The CHAIRMAN. Were you present at the time it was presented for the judge's signature?

Mr. ESTERLINE. I read the bill in equity and the exhibits in open court to the United States district court and was present through all of these hearings from the beginning until now.

Mr. MICHENER. If the bill was prepared by the middle of July, and these things had occurred, and you thought you had jurisdiction, why did you not file your bill then and start the suit instead of waiting until the middle of October?

Mr. ESTERLINE. No; the 1st of September.

Mr. MICHENER. Well, the 1st of September.

Mr. ESTERLINE. Well, it was hoped all the time that conditions would improve. There were reports and rumors that there were negotiations on to end the strike, and the Attorney General did everything that he could, consistent with public duty, in my judgment, to prevent the filing of this bill; but the situation got to the stage where there was nothing left——

The CHAIRMAN (interposing). Now, at the time the hearing was had at Chicago on the 11th of September and the week following, was the Attorney General present then?

Mr. ESTERLINE. The Attorney General was present on the 11th of September when we presented the bill and applied for the temporary restraining order, and he made a statement to the court at that hearing.

Mr. YATES. That was at the expiration of the 10 days' notice, was it not?

Mr. ESTERLINE. No; that was the first hearing.

Mr. CLASSON. Was that on the 1st of September?

Mr. ESTERLINE. That was on the 1st of September. What did I say?

Mr. CLASSON. You said the 11th.

Mr. YATES. — on September 1 that the 10 days' notice was given?

Mr. ESTERLINE. Well, I will change my dates; I got my dates confused. On the 1st of September the Attorney General and I appeared before the court, presented the bill in equity and the exhibits, applied for the temporary restraining order, which was issued, and the Attorney General made a statement to the court of what the situation was before the order was issued.

Mr. GOODYKOONTZ. Did the defendants, or any of them, appear at that time.

The CHAIRMAN. What I was trying to get at was this: At the time the motion was made to set the writ aside it has been claimed that the Attorney General took no part in that hearing. Was he present at that time?

Mr. HERSEY. That was on the 11th?

Mr. ESTERLINE. Yes, sir, the Attorney General was present on the 11th of September, 1922, when the hearings commenced, and stayed for three or four days—not always in open court, however. He was in court, certainly, all of the first day. He then left the city and returned when we were making the final arguments before Judge Wilkerson on the application for the preliminary injunction and he made another statement to the court then.

The CHAIRMAN. Do you know how long he was absent?

Mr. ESTERLINE. I can give you that. The opinion is dated September 23, 1922, and it was about two days before that——

The CHAIRMAN (interposing). Two days before that?

Mr. ESTERLINE. About the 21st.

Mr. FOSTER. Do you know whether or not the Attorney General was in Chicago all of the remainder of the week following September 11th?

Mr. ESTERLINE. No; he went to Columbus, Ohio.

Mr. FOSTER. Do you know when he went?

Mr. ESTERLINE. Well, I did at the time, but I have forgotten; it was one or two days after the 11th. He came back when we sent him word that we were going to make the final arguments.

Mr. GOODYKOONTZ. As I understand, you gave no notice that you intended to apply for the temporary restraining order.

Mr. ESTERLINE. No; no notice was given of the intention to apply for the temporary restraining order: but full notice was given, and the defendants appeared, on the application for the preliminary injunction.

Mr. JEFFERIS. That is the usual procedure in matters of that kind, is it not?

Mr. ESTERLINE. Yes, sir; that procedure is provided by the rules of court and the statutes.

Mr. HERSEY. I would like to ask you whether you know—I do not mean necessarily you personally—whether you or anyone else under you, so far as you know, ever had any preliminary talk with the judge who granted the preliminary injunction prior to asking for it in open court?

Mr. ESTERLINE. I should say that they did not, except as I have stated here, in making the arrangements for the hearing.

Mr. GRAHAM. And at that time you did not even tell him what the case was that you wanted him to hear?

Mr. ESTERLINE. No. Is there anything more?

Mr. HOWLAND. No. Now, unless there are some other questions, we will submit, to be attached to the records, as exhibits, if you please, the bill in equity, in printed form—the bill of complaint; the temporary restraining order; the opinion of Judge Wilkerson; the preliminary injunction order; the injunction writ; the preliminary injunction order of October 5 and the injunction writ; the answer of all defendants who entered full appearance; the brief for the defendants; the brief for the United States; and the reply brief.

The CHAIRMAN. You do want those printed in the record?

Mr. HOWLAND. No; I do not want them printed at all. I am just going to file them.

### IN RE CALL FOR DOCUMENTS.

The CHAIRMAN. All right. I would like to ask counsel this question: I note attached to these specifications a request for 147 documents; and in addition to that the entire record of correspondence in the War Department, the Navy Department, the Federal Trade Commission, with the Department of Justice, since the 1st day of January, 1920—I think it is.

Mr. HOWLAND. That was the request for documents attached to the specifications.

The CHAIRMAN. I would like to know how large a quantity of documents that would make?

Mr. HOWLAND. That would simply take a freight train to pull those over here. I have no way of knowing myself; and I doubt whether anyone would; but that would just simply rifle the Department of Justice of all of its files, and the War Department, etc., and so on. Why, this committee could not read them in the balance of your lifetime.

Mr. FOSTER. Well, is there anything else that Mr. Keller, while he was present, or his attorneys, asked of your department that they did not secure?

Mr. HOWLAND. Not a thing.

### TESTIMONY OF MR. BLACKBURN ESTERLINE—Resumed.

Mr. JEFFERIS. I want to ask Mr. Esterline a question or two: Was there anything unusual in the preparation of this case, in so far as it came under your observation, differing from any other case that came to the Department of Justice?

Mr. ESTERLINE. No, sir; we all bent our united efforts to make strictly in compliance with the rules and practice of the courts which prevail in such cases; otherwise we were in danger of being reversed on appeal.

Mr. JEFFERIS. And during the hearing in Chicago, was there any disposition, or any effort made on your part, or anyone else connected with the Government, to deny them a full, fair, and complete hearing, there before the court, in open court?

Mr. ESTERLINE. No; on the contrary, the defendants themselves, through their counsel, in a written brief here [indicating] refer to the patient conduct of Judge Wilkerson, and say:

The court from time to time (with a courteous tolerance of an opposing point of view which counsel for complainant might well imitate) stated that counsel for the defendants were at liberty to rear legal issues upon a changed state of pleadings and proof.



Mr. GRAHAM. Perfect tolerance of what? I did not get the last.

Mr. ESTERLINE. Of an opposing point of view.

Mr. JEFFERIS. In other words, he seemed to have an open mind?

Mr. ESTERLINE. Yes; at all times; and there was never any complaint on the part of the defendants, so far as I ever heard, that they were not accorded a full hearing. The court limited no one in proof or argument.

Mr. GOODYKOONTZ. Mr. Esterline, if consistent with your relation to the department, I would like to ask your opinion, as a lawyer, and as an official of the Government, concerning the effect of this decree—whether it has had a happy or a baneful effect upon the country?

Mr. HERSEY. Well, I object to going into that, Mr. Chairman; it would not throw any light upon this investigation—

Mr. GOODYKOONTZ (interposing). Yes; it would throw light upon the subject. It would be the opinion of a distinguished lawyer—who happens to be a Government official—as to the force and effect of the decree—

Mr. HERSEY (interposing). What effect?

Mr. GOODYKOONTZ (continuing). But the result of the suit—whether it accomplished the purpose that was intended by the proceeding—what effect the pronouncement and entry of the decree had, seems to me important.

Mr. HERSEY. Well, I do not see how that throws any light on this question.

Mr. GOODYKOONTZ. Well, I look at it in a different way; and I am a member of this committee—and you are only one, although a very important one.

Mr. HERSEY. Let him go ahead.

Mr. ESTERLINE. We think it has had a very wholesome effect. On the last day of the hearing, in the presentation of evidence, we presented the affidavits of the operating officials of the Chicago & North Western Railroad; the Chicago & Eastern Illinois; the Chicago & Alton; the Chicago Great Western; the Chicago, Burlington & Quincy; and the Chicago, Rock Island & Pacific—all to the effect that, since September 1, the day the temporary restraining order was issued, the lawless activities of the strikers had substantially diminished, and on one of these lines, the Chicago & Eastern Illinois, which theretofore had had serious disorders, but one instance of violence had been reported since that date, and that was of insignificant consequence. In our judgment the injunction broke the strike completely.

The result has been that the coal is moving, trains are moving, and the carriage of the mail is being expedited and no longer obstructed.

We showed in that hearing that 953 mail trains had been discontinued between July 1, 1922, the date of the strike, and September 11, the day we commenced putting in the evidence; and that information was furnished from the office of the Postmaster General.

Mr. FOSTER. Did any officer of any railroad have any intimation of the bringing of this suit until after it was filed?

Mr. ESTERLINE. No; I think not. There was not a single one of them in court. A case was on trial there in which a striker was brought before the court for contempt of one of the injunctions

issued at the instance of a railroad company. The counsel for the company in that case subsequently told me that he had an advantage in that he happened to be in court the day we appeared to present our bill in equity; and he seemed to be the only one who knew anything about it and he learned about it by sitting in court.

The CHAIRMAN. That is all.

Mr. HOWLAND. That is all, so far as I am concerned.

Mr. YATES. I would like to ask him a question:

If I understand this matter right, there were just about three courses open to the Government at the time: One was to allow murder, train wrecking, etc., to continue. The second was to call out the armed forces of the Government, and possibly mow down the strikers. The third way was to resort to the orderly process of the law; and that course was resorted to?

Mr. ESTERLINE. That course was resorted to; and as the Supreme Court of the United States held in the Debs case, the Government officers should be commended for having pursued the course of undertaking to settle such controversies within the walls of our courts.

Mr. YATES. If that resort to the orderly course of the law had not been resorted to, you can not say what the consequences would have been?

Mr. ESTERLINE. No.

Mr. HERSEY. Did the American Federation of Labor ever appear by counsel in court in these injunction proceedings?

Mr. ESTERLINE. Not as such. I am not clear exactly as to their representations. Mr. Richberg, of Chicago; Mr. Mulholland, of Toledo; and Mr. Easby-Smith, of the District of Columbia, all signed this answer [indicating] on behalf of all of the defendants.

And one of those defendants is the Railway Employees Department of the American Federation of Labor. Now, from whom they got their retainers, I have not the remotest idea.

Mr. YATES. I want to ask one other question: Did you say, after the issuance of a writ, that the murders and train wreckings that had been going on decreased? Was that your word?

Mr. ESTERLINE. Yes; "diminished" was the word I used. But I will accept your word.

Mr. YATES. Have they ceased, do you know? Well, perhaps you can not answer that.

Mr. ESTERLINE. They have dwindled into insignificance compared with what they were.

The CHAIRMAN. That is all.

Mr. HOWLAND. Mr. Chairman, a part of this specification that Mr. Esterline has been considering—the injunction specification—alleges that we deprived certain employees of their liberty, because they were afraid to take out their trains in transportation; and there is testimony that has been introduced here in that connection, some time ago, when we first opened these hearings; and the arrest of certain employees at Needles was referred to as a case of oppression.

Will you advise the committee, Mr. Seymour, with reference to the information in your possession as assistant to the Attorney General as to the result of these indictments and arrests at Needles?

Mr. SEYMOUR. The advice comes from the Assistant Attorney General, or the Special Assistant Attorney General, at Los Angeles, Calif., under date of December 20, 1922, in reference to this trial at Needles:

Verdict guilty against all defendants. Jury out less than an hour. H. C. Todd.

In that case Mr. Stevenson, the attorney for the Brotherhood of Locomotive Engineers, has suggested that those men were not guilty of a conspiracy, but that they were simply refusing to take out defective equipment. That was the main defense in this case.

Mr. JEFFERIS. How many of them did he say had been found guilty?

Mr. SEYMOUR. All of the defendants. I do not know how many were indicted under that conspiracy charge; I think eight.

Mr. HERSEY. The defendants were all of those who abandoned their trains?

Mr. SEYMOUR. Yes.

IN RE SPECIFICATION NO. 8, CERTAIN PAPERS FILED.

Mr. HOWLAND. Now, Mr. Chairman, we offered, or we promised, at any rate, in the New York, New Haven & Hartford matter, specification 8, subdivision No. 2, to hand in the opinion of the court in that matter, together with the attendant journal entries which went on. I submit that to you now. [Handing paper to chairman.]

We also promised you the report of Mr. West, in the Gas Improvement matter, known as "United States of America v. United Gas Improvement Co." I hand that to you now. [Handing paper to chairman.] I think we have practically closed now, except with reference to one other specification, the specification No. 10; and upon that we will call Mr. Burns; that is on page 61 of the hearing.

**ADDITIONAL TESTIMONY OF MR. WILLIAM J. BURNS, DIRECTOR OF BUREAU OF INVESTIGATION, DEPARTMENT OF JUSTICE.**

Mr. FOSTER. Does that cover the shadowing of Mr. Woodruff?

Mr. SEYMOUR. No—well, we can do that.

Mr. HOWLAND. Just before we go on with this matter, Mr. Burns, what is there to your shadowing, or having your operatives shadow, Mr. Woodruff? I believe Mr. Johnson disclaims that.

Mr. FOSTER. Yes.

Mr. SEYMOUR. As to shadowing Mr. Woodruff.

Mr. BURNS. Mr. Woodruff was never shadowed by the Department of Justice Bureau of Investigation.

The entire situation was this: Colonel Goff sent for me one day and told me that he had some information to the effect that some person in the Department of Justice was, possibly, carrying out information or documents to Mr. Scaife, or Major Watts, and wanted an immediate investigation made of it, and if there was anything to it, he wanted to know it.

Mr. HERSEY. This Mr. Scaife was once an employee of the Department of Justice?

Mr. BURNS. Yes; Captain Scaife.

Mr. FOSTER. He was Mr. Woodruff's attorney?

Mr. BURNS. Yes.

Mr. FOSTER. Was he discharged?

Mr. BURNS. He left the service.

I called Mr. Walker, who has charge of our local office here. I mean by that that we have an office in Washington, the same as we have in New York, Philadelphia, Boston, Baltimore, and other cities. We sent for him, and told him to put a shadow on Mr. Scaife and Major Watts, and see whether or not they were connected with any person from the Department of Justice; or whether any person from the Department of Justice was carrying out documents to them.

They shadowed them, I think, for three or four days, and made a verbal report to Mr. Walker, and he made a report to me.

One day I read in the newspapers where Mr. Woodruff made a complaint against being shadowed; and I immediately called up on the phone and made an appointment to see him, and called at his house, and told him that I understood that he had charged us with having shadowed him. He said that he had that information, but he did not pay very much attention to it. I assured him that there was nothing whatever in it; that he had not been shadowed, but that we did shadow Captain Scaife and Major Watts.

The Attorney General immediately sent for me, when he read this article in the newspaper, and asked me whether or not there was any truth to it. I assured him that there was not. He then directed me to make a thorough investigation to determine positively whether or not any of our men, on their own motion, had shadowed a Congressman.

I made the investigation and found that they had not, and so reported to the Attorney General, and he then stated to me that, under no circumstances, would he permit the Department of Justice to shadow Members of Congress. I assured him that we never had any such thought, and never had while I had been in charge.

Mr. JEFFERIS. Mr. Burns, Mr. Woodruff mentioned the names of Crawford, I think, Gray, Raynor, Connally, and Keats, as though some of their reports might show something about shadowing him. Is there anything to that?

Mr. BURNS. No; they never shadowed him. The reports show that they never shadowed him at all.

Mr. YATES. You have the reports here?

Mr. BURNS. Yes; all of the reports that we have in the matter. Most of the reports were verbal reports to Mr. Walker, and from Mr. Walker to me. The whole purpose was to determine whether or not any person was taking documents out of the Department of Justice; it was not really for the purpose of seeing where these men were going, except as they may have connected with people connected with the Department of Justice.

Mr. GOODYKOONTZ. Had any files escaped or been abstracted from the department?

Mr. BURNS. I do not know just what Colonel Goff had in mind. That was his opinion. But we never shadowed a Congressman—nor any of our men.

Mr. BIRD. You have the reports there that were called for on those dates?

Mr. BURNS. We have all the reports there on the shadowing, and the statement from Mr. Walker, our man in charge.

Mr. HOWLAND. Now, Mr. Burns, let us come specifically to Mr. Woodruff's request that reports from four named men were to be produced here: Have you such written reports from those four named men?

Mr. BURNS. Here are all the reports that we had in that matter.

Mr. HOWLAND. There is not one there from any of those men?

Mr. BURNS. No.

Mr. HOWLAND. Only one from Mr. Walker?

Mr. BURNS. From Walker, giving a statement as to just what occurred.

Mr. HOWLAND. Now, tell what Walker reported.

Mr. BURNS. Walker reported that these men had shadowed Scaife and Major Watts, and that on one occasion—and I think that is what Mr. Woodruff has reference to as to his mail being tampered with—one of the men reported to Mr. Walker that he found Captain Scaife with a sack, and he did not know what was in it. He shadowed him to the post office, and at the post office our agents met a young man in the post office that he knew, and he asked him what Captain Scaife had in that bag. The man came back and told him that he had speeches of Mr. Woodruff's. That is all there was to it.

Mr. MICHENER. Those were speeches that he was sending off?

Mr. BURNS. That he was sending out.

On another occasion, we read in the newspaper where Mr. Woodruff had been robbed and books had been taken, and somebody had cut the water pipe and flooded his offices. I immediately again called him on the telephone and asked him if he had any idea that that was being done by the Bureau of Investigation; and he said he did not know who did it. I told him I would immediately send Mr. Walker to see him, and I wanted Mr. Walker to make a thorough investigation and report to me in the matter.

Mr. Walker went up to his office and met him, and was invited to luncheon with him, I think. They made a search, and found the book that he talked of in the testimony; and his stenographer then admitted that it was where she had put it, and had forgotten about it.

The leaking of the water pipe was some natural situation that developed with which, of course, we had nothing to do.

Mr. HOWLAND. Now, Mr. Burns, we call your special attention to specification No. 10, which relates to your activities in connection with a convention, or meeting of so-called socialists or radicals, or reds, at Bridgman, in the State of Michigan, some time this last summer, I think it was.

Mr. BURNS. Yes.

Mr. HOWLAND. Last August. This is under the charge of diversion of public moneys for illegal purposes. Now, Mr. Burns, will you tell us what your activities were, and who these people were, and why you were there?

Mr. BURNS. Yes. We investigate for the Department of Justice, most of their investigations of persons who illegally come into the country. We also investigate the visés of the State Department. We are very often notified that certain people are in the country illegally.

In following up the persons who had been coming into the country illegally, namely, a number of Communists from Moscow, we learned



that this meeting of the Communists was going to be held at Bridgman, Mich., and we knew that several of the persons who were going to attend it were under indictment in the United States courts.

We were very much interested in them, and naturally, we notified the State of Michigan that they were going to hold this meeting at Bridgman; and the State of Michigan arrested these people; and we found that the people we were interested in were at this meeting at Bridgman, Mich. There are a great many details connected with it, in which we are very deeply concerned, but which I do not think it would be well to state at this time, in view of the fact that the State of Michigan is now just about to try those men in Michigan. But we had a perfectly legal right to do all that we did in the matter.

Mr. HOWLAND. Did you take any part in the arrests?

Mr. JEFFERIS. It was done for the protection of the United States Government?

Mr. BURNS. Yes.

Mr. YATES. The averment in the charge is that there was an interference by Daugherty with the legal processes of the State of Michigan.

Mr. HOWLAND. I was just about to ask about that. What interference was there by you with the legal processes or officers of authority of the State of Michigan in connection with this matter?

Mr. BURNS. None whatever—none whatever. We had a number of men there for the purpose of observing the persons that we were interested in.

Mr. HOWLAND. Is this a correct statement, Mr. Burns—that you had this convention under surveillance?

Mr. BURNS. Yes.

Mr. HOWLAND. And that is all you did?

Mr. BURNS. That is all I did.

Mr. HOWLAND. Were there any representatives of the Communist Party present, so far as you know?

Mr. BURNS. I understand there were three there, from Moscow.

Mr. HOWLAND. You do not care to give their names?

Mr. BURNS. No.

Mr. HOWLAND. I think that is all, unless the committee has some questions.

Mr. HERSEY. I just want to ask one question on the matter of Mr. Woodruff's testimony. You were investigating, by request, leaks in the Department of Justice, not leaks in Mr. Woodruff's office? [Laughter.]

Mr. BURNS. Yes, sir.

#### **STATEMENT BY HON. PAUL HOWLAND, COUNSEL FOR THE ATTORNEY GENERAL, RELATIVE TO CERTAIN SPECIFICATIONS.**

Mr. HOWLAND. Mr. Woodruff requested that we furnish a list of all antitrust cases, with the date of their commencement; and in cheerful compliance with that request, I hand this list to the chairman.

Now, with one further suggestion, with reference to the general relations between the Federal Trade Commission and the Department of Justice as to the correct legal relation between the two, as under-

stood by the Federal Trade Commission and the Department of Justice, I want to introduce a statement by Mr. Gaskill, chairman of the Federal Trade Commission, in his letter to Senator La Follette, and where Senator La Follette requested certain information; and I will now read from the letter of Mr. Gaskell to Senator La Follette, under date of August 10, 1922.

Mr. CLASSON. That is already printed in the Attorney General's answer, is it not?

Mr. HOWLAND. Yes; it is in the Attorney General's answer; and if the committee is willing to accept our professional statement, I think we will let it go.

The CHAIRMAN. You have got all sorts of evidence here. And I do not see what that sort of reports amounts to, anyhow.

Mr. CHANDLER. It is printed in the record already.

Mr. HOWLAND. Now, there are two other specifications upon which we have not touched. One relates to the discharge of Major Watts from the department; and I submit now to this committee that we ought not to be compelled to go into any matters relating to the hiring of people, or employing or discharge of employees.

Mr. HERSEY. That is not an impeachment matter.

Mr. HOWLAND. Well, I will not raise that question. But we do not want to hurt anybody; and that is our position with regard to Major Watts.

Now, there is one other specification, specification 6. It is charged that there is an attorney in Chicago by the name of LeBosky, who was an attorney for the United States, or an Assistant Attorney General, and that he has taken a retainer in regard to private matters, or has accepted a private business against the Government.

He is retained in a particular case—one case, which is a mail-fraud case.

Mr. FOSTER. Retained by the Government, you mean?

Mr. HOWLAND. Yes; retained by the Government in a mail-fraud case; just one case. Now, then, he did accept a retainer in a liquor case, outside of that employment; against the Government he took a client.

Mr. MICHENER. You are just reciting what the Attorney General's answer states, are you not?

Mr. HOWLAND. I am stating it professionally.

Mr. MICHENER. Well, I know; but we do not take professional statements as evidence as a rule. I have raised that point right along.

Mr. HOWLAND. Just a moment. I am stating what the answer states; and I am saying to this committee that I hope they will not ask us to produce evidence on that point.

Mr. MICHENER. I understand that. But if you want to state you would have to be sworn; and if you do not want to do that you can put on some witnesses to testify to them.

Mr. FOSTER. I take it that Mr. Howland is stating the point to see whether or not the committee wants evidence on it.

Mr. HOWLAND. Do you want evidence on that, Mr. Michener?

Mr. MICHENER. No; but I do not want you to state evidence in your argument, because all the way through I have asked that a man be sworn if he testifies.

Mr. HOWLAND. I am just stating this in order to ask the committee if they want me to produce evidence on this charge.

Mr. GOODYKOONTZ. For one, I am perfectly willing to accept Mr. Howland's statement; he is a reputable practicing lawyer.

The CHAIRMAN. There is only one point involved; that is, whether this man was a special employee or a general employee?

Mr. HOWLAND. Not a general employee at all; he is a special employee in one mail fraud case.

The CHAIRMAN. And that is a charge rather against that attorney than against Attorney General Daugherty?

• Mr. MICHENER. I am not questioning your word here; but I am saying this: I do not want the record here to show that you have stood up here and testified, which you are doing, when others have been prevented from doing that.

Mr. GRAHAM. I understood that he was simply asking the committee whether they wanted evidence.

Mr. HOWLAND. That is all; I was asking whether the committee wanted evidence on this, and I considered that charge so frivolous that I did not think they should ask for it. And that is my attitude now, and that is my attitude with reference to a lot of these matters.

Mr. JEFFERIS. I move Mr. Chairman, that we consider the charge frivolous, and not take any testimony on it.

The CHAIRMAN. If any member of the committee desires to have the testimony taken on that charge, they will please hold up their hands.

(No hands were raised.)

Mr. JEFFERIS. And I make the same motion about the Watts case.

The CHAIRMAN. How about the Watts case? If there is any member wants to hear evidence on that, he will hold up his hand.

(No hands were raised.)

Mr. HICKEY. That is purely a question of administration.

Mr. HOWLAND. Yes.

The CHAIRMAN. Is that all?

Mr. HOWLAND. Now, we are through, unless the committee desires something further. We have proffered everything that we have, and have furnished all the information and documents that have been asked for, and we are through.

Mr. HICKEY. I move that the proceedings close.

Mr. BIRD. Mr. Chairman, may I just inquire about specification No. 3 in regard to the building industry in the District of Columbia?

Mr. HOWLAND. We know nothing about it.

Mr. BIRD. Well, was anything put in about it?

Mr. HOWLAND. Not a thing by anybody. We know nothing whatever about it.

Mr. BIRD. It is another of the charges that come under that category, that you know nothing about?

Mr. HOWLAND. We know nothing about that.

Mr. BIRD. I mean, are there any charges in here that have not been—

Mr. HOWLAND (interposing).

1 everything else.

Mr. BIRD. You have covered everything except this No. 3?

Mr. HOWLAND. Everything except No. 3.

Mr. BIRD. And you know nothing about that, whatever?

Mr. HOWLAND. Nothing whatever; it never came before us.

Now, Mr. Chairman, would it be proper for me to make a very short statement, not to exceed 5 or 10 minutes, as to our hopes and ambitions in this matter?

Mr. GRAHAM. I think you had better not.

Mr. HOWLAND. Very good.

Mr. GRAHAM. I think the committee understands the matter very well.

The CHAIRMAN. Now, if you are through, the committee will resolve itself into an executive session.

(Thereupon, at 4 o'clock p. m. the committee went into executive session, after which it adjourned.)











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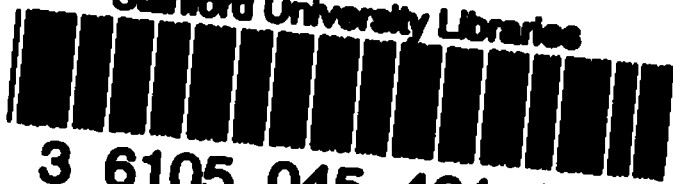






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